Supreme Court, U.S.
FILED

091179 MAR 26 2010

OFFICE OF THE CLERK

No. _____

IN THE

Supreme Court of the United States

Richard Bolte,
Petitioner,
v.
State of Wisconsin Supreme Court, Chief Justice Shirley S. Abrahamson; *et al,*
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

PETITION FOR WRIT OF CERTIORARI

Richard Bolte, *pro se*
3805 NE 115th St.,
Seattle, WA 98125
206-817-6398
rick.bolte@gmail.com

Questions Presented for Review

Has the Appellate 9th Circuit Court so far departed from accepted and usual judicial proceedings by condoning the clear procedural error of its District Court, and by designating Plaintiff/Appellant/Petitioner's Constitutional tort claims as "insubstantial", as to call for this Court's Supervisory power?

The claims that the Appellate Court deemed "insubstantial" present the following serious Questions and Issues:

> Wisconsin Supreme Court Judgment *O.L.R. v Bolte*, 285 Wis.2d 569, 699 NW2d 914 (2005); (Apdx-38), defies and conflicts with two prior United States Supreme Court Decisions against Wisconsin, *Wisconsin v Pelican*, 127 U.S. 265, 271 (1888) and *Keller v Wisconsin*, 374 U.S. 102 (1963) (relying on *Sperry v. Florida*, 373 U.S. 379 (1963)). Has Wisconsin abrogated Supreme Court Orders and nullified its Law?
>
> Entirely without right and beyond their jurisdictions, contrary to their State Constitutions, the structure of the original independent States (and as expanded), the United States Constitution, the Supremacy Clause, the 14th Amendment, *McCue, Sperry/Keller, Spanos,* and *Poole*, Wisconsin

and Colorado enforced their Sovereign State authority and power in the Federal District Court of Colorado usurping the federal authority there. In doing so, have the two States unilaterally Nullified fundamental State\State\Federal jurisdiction Law?

Do 28 U.S.C. §2201 & §2202 mandate that lawsuits collaterally attacking the enforcement of state law in federal jurisdictions, and the validity of judgments resulting therefrom, be admitted to the courts of the United States without pre-admission merits evaluations? (*Old Wayne v McDonough*, 204 U.S. 8, 15 (1907))

Can any court of the United States override, nullify and thwart the Remedy 28 U.S.C. §2201 creates by arbitrarily invoking the *Bell* "insubstantial" exception to a lawsuit claiming, in its "appropriate pleading", *patently irrefutable violations* of the Fourteenth Amendment and the grievous tort of intentionally disregarding a Citizen's Rights? (*Bell v. Hood*, 327 U.S. 678, 682-83 (1983)) (*Wischer v Mitsubishi*, 2005 WI 26, ¶7, 279 Wis2d 4, 694 NW2d 320 (2005))

Subsidiary Question

Can Appellate Courts impose the "insubstantial" *Bell* exception where the lower court did not?

List of Parties

Richard Bolte,
Petitioner

State of Wisconsin Supreme Court, Chief Justice Shirley S. Abrahamson; Chief Justice Shirley S. Abrahamson, personally; Justice Jon P. Wilcox, personally; Justice Ann Walsh Bradley, personally; Justice N. Patrick Crooks, personally; Justice David Prosser, Jr., personally; Justice Patience D. Roggensack, personally; Justice Louis B. Butler, personally; State of Colorado El Paso County District Court, Judge Theresa M. Cisneros; Judge Theresa M. Cisneros, personally; El Paso County, a municipal corporation; Carol Koscove,
Respondents.

Table of Contents

Questions Presented For Review	(i)
List Of Parties	(iii)
Table Of Cited Authorities	(v)
Opinions and Orders	1
Jurisdictional Grounds	1
Constitutional And Statutory Provisions	2
Statement Of The Case	4
Federal Questions First Raised	7
Reasons For Granting Writ	8
Conclusion	17
Appendix Index	Apdx-1
9th Circuit Court ORDER	Apdx-2
District Court ORDER OF DISMISSAL	Apdx-3
Bolte's Rule 52(b) Motion	Apdx-13
Complaint; Dist. Crt Doc.#1	Apdx-18
Attach A to Compl; *O.L.R. v Bolte*, 285 Wis.2d 569, 699 NW2d 914 (2005)	Apdx-38
Attach D to Compl; El Paso County, Colorado, Case No. 96CV2233,	Apdx-55

Table Of Cited Authorities

Atascadero State Hospital v Scanlon,
473 U.S. 234, fn 44 6
Bell v. Hood, 327 U.S. 678, 682-83 (1983) ..... (ii)
Bradley v. Fisher. 80 U.S. 335 (Mem),
20 L.Ed. 646, 13 Wall. 335, (1871) 12
City of Monterrey v Del Monte Dunes,
526 U.S. 687, 709 (1999) 11
Elliott v. Peirsol, 1 Pet. 328, 340 ..... 5, 8, 11
Gibbons v. Ogden, 9 Wheat. 1, 211, 6 L.Ed. 23 9
Hoult v Hoult, 57 F3d 1, 6 (1st Cir. 1995)) 5, 8
In re McCue, 211 Cal. 57, 66, 293 P. 47, 51
(1930) ..... (i), 5
In re Poole , 222 F 3d 618, 622 (2000) ..... (i), 5, 11
Keller v Wisconsin, 374 U.S. 102 (1963) relying on
Sperry v. Florida, 373 U.S. 379 (1963)
..... (i), 5, 9, 10, 11, 12
Old Wayne v McDonough, 204 U.S. 8, 15
(1907) ..... (ii) 15
O.L.R. v Bolte, 285 Wis.2d 569, 699 NW2d
914 (2005); (Apdx-6) ..... (i), 4, 8, 9, 10, 12
Omni Capital v Rudolf Wolff, 484 U.S. 97, 102
(1987) 5
Postal Telegraph Cable Co v. State of Alabama,
155 U.S. 482, 487 (1894) 6
Scott v. McNeal, 154 U.S. 34 (1894) 5, 8, 11,14
Slaughter-House Cases , 83 U.S. 36,
115 (Wall) (1872) 13. 16
Spanos v. Skouras, 235 F.Supp 1, 11-14 (1964),
aff'd 364 F.2d 161 (2d Cir. 1965)
..... (i), 10, 11, 12

Sperry v. Florida, 373 U.S. 379 (1963) .... (i), 5, 9, 10
State v Jennings, 2002 WI 44, 252 Wis. 2d 228,
647 N.W.2d 142 (2002) 9
Thompson v. Whitman, 18 Wall. 457, 468 14
United States v Zima, 766 F2d 1153, 1159
(7th 1985) 12
Walker v City of Birmingham, 388 U.S. 307,
337-338 (1967) 15
Wischer v Mitsubishi, 2005 WI 26, ¶7,
279 Wis2d 4, 694 NW2d 320 (2005) ..... (ii)
Wisconsin v Pelican, 127 U.S. 265, 271 (1888)
..... (i), 5, 9, 11

Fourth Article of U.S. Const., Section 2, Cl. 1 7

Sixth Article of U.S. Const., Cl. 2 ..... 8, 9, 15, 17

14th Amendment to U.S. Constitution .. 7, 8, 13, 16

28 U.S.C. §1654 10

42 U.S.C. §1983 7

28 U.S.C. §2201 ..... (ii), 5, 7, 13, 16

28 U.S.C. §2202 ..... (ii), 5, 7

F.R.C.P. 4 Apdx-13

PETITION FOR WRIT OF CERTIORARI

Petitioner Richard Bolte (Bolte) respectfully prays that a writ of certiorari issue to review the decision of the Ninth Circuit Court of Appeals.

Opinions and Orders

On January 19, 2010, the Ninth Circuit Court ORDER held "that the questions raised in this appeal are so insubstantial as not to require further argument" and summarily AFFIRMED the District Court's Dismissal Orders. It is on the Court's Docket in Case No. 08-35941 as DktEntry: 7198845 (Apdx-2)

On August 25, 2008, the District Court for the Western District of Washington GRANTED the Wisconsin Defendants' motion to dismiss and DISMISSED them. It is on the Court's Docket in Case 2:08-cv-00821 RSM as Document 39 (Apdx-3) . Like Dismissals for the rest of the Defendants were entered through October 20, 2008 as Documents 47, 48, & 50.

Jurisdiction

This Court has jurisdiction under 28 U.S.C. §1254. The Circuit Court's ORDER as noted above was entered on January 19, 2010.

Constitutional And Statutory Provisions

The Fourth Article of the U.S. Constitution, Section 2, Clause 1 provides:

> The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

The Sixth Article of the U.S. Constitution, Clause 2, in pertinent part provides:

> This Constitution, and the Laws of the United States ... shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Fourteenth Amendment to the U.S. Constitution provides in pertinent part as follows:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The statute granting exclusive control of *pro hac vice* admissions in federal courts, 28 U.S.C. §1654, provides:

> In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

The statute granting redress in the federal courts for color-of-law deprivation of rights is 42 U.S.C. §1983, which provides in part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress....

The statute granting redress in the federal courts for declaratory relief, 28 U.S.C. §2201, Creation of remedy, is presented in full in the Reasons section on page 18.

The statute expanding declarations of rights is 28 U.S.C. §2202, Further relief , which provides:

> Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

Federal Rule of Civil Procedure 4 was involved in the ISSUE on Appeal never reached, resolved or decided by the Circuit Court. Relevant portions of Rule 4, and argument pertaining to its applicability, can be found in Appendix-13.

Statement of the Case

On April 6, 1998 the Defendant State of Colorado El Paso County Court, Defendant Judge Theresa Cisneros presiding, entered a civil Judgment enforcing penal Colorado law against Bolte finding that he had engaged in the unauthorized practice of law in Colorado while acting as a *pro hac vice* admitted attorney in the Federal District Court of Colorado in Denver, Colorado. The Judgment inured to the benefit of Defendant Carol Koscove. (Attachment D to Bolte's filed Complaint in the Western District Court of Washington and incorporated therein; District Court, El Paso County, Colorado, Case No. 96CV2233, April 6, 1998; (Apdx-55)) It is patently void.

On September 3, 1998, Defendant Koscove, through her attorney, filed a grievance against Bolte with the Wisconsin Board of Professional Responsibility (later renamed the Office of Lawyer Regulation, *O.L.R.*) incorporating and including the Colorado Judgment.

On July 19, 2005, the Defendant State of Wisconsin Supreme Court, the highest court there and its court of last resort, acting through the seven named Defendant Justices, entered a penal Judgment against Bolte for his conduct in the Federal District Court of Colorado in Denver, Colorado. The Wisconsin Judgment specifically found that "The events giving rise to this proceeding occurred in Colorado, where Bolte was then residing." (Attach A, ¶ 3, to Bolte's filed Complaint and incorporated therein; Dist. Crt Doc.#1; *O.L.R. v*

Bolte, 285 Wis.2d 569, 699 NW2d 914 (2005); (Apdx-38, 39)) (emphasis added) It is patently void.

Both Judgments are void for having been entered by State courts that were acting entirely without right and beyond their jurisdictions. (*In re McCue*, 211 Cal. 57, 66, 293 P. 47, 51 (1930); *Elliott v. Peirsol*, 1 Pet. 328, 340; *Scott v. McNeal*, 154 U.S. 34, 46; *Wisconsin v. Pelican*, 127 U.S. 265, 271 (1888); *Keller v Wisconsin*, 374 U.S. 102 (1963) relying on *Sperry v. Florida*, 373 U.S. 379 (1963); *In re Poole* , 222 F 3d 618, 622 (2000); *Hoult v Hoult*, 57 F3d 1, 6 (1st Cir. 1995))

On May 5, 2008, Bolte filed a Complaint in the U.S. District Court for the Western District of Washington (District Court Doc.#1, assigned Case # 2:08-cv-00821-RSM (Apdx-18)) It makes claims for "declaratory and injunctive relief and the recovery of damages solely under the Constitution and laws of the United States" and specifically invoked federal jurisdiction under 28 U.S.C. §2201 & §2202 (and other statutes) for Declarations of jurisdictional invalidity and injunctive relief. (D.C.Doc.#1, pp. 2 & 5, ln's 19-20; (Apdx-18, 20, 22))

Plaintiff then served all Defendants as STATES and STATE-ACTORS pursuant to Federal Civil Procedure Rules 4(j) & 4(k)(2). He faithfully followed the fact appropriate *Omni* "unmalleable principle of law" that federal courts must ground their personal jurisdiction on a federal statute or rule and was rejected by the Washington District Court for having done so. (*Omni Capital v Rudolf Wolff*, 484 U.S. 97, 102 (1987))

On August 25, 2008, District Court Judge Ricardo S. Martinez entered his ORDER

GRANTING WISCONSIN DEFENDANT'S MOTION TO DISMISS for Plaintiff's failure "to establish this court's personal jurisdiction over the non-resident defendants" because they were not served pursuant to Federal Rule of Civil Procedure 4(e) SERVING AN INDIVIDUAL and 4(k)(1) which he wrote provides that "[s]ervice of a summons . . . is effective to establish jurisdiction over the person of a defendant: (A) who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located . . . F.R.Civ.Proc. 4(k)(1)(A)." (D.C.Doc.#39, pp. 4-5; (Apdx-3, 9)) Wisconsin is not an INDIVIDUAL, person, non-resident or citizen, nor is a state subject to the jurisdiction of a court of general jurisdiction of any state including itself. (*Postal Telegraph Cable Co v. State of Alabama,* 155 U.S. 482, 487 (1894); *Atascadero State Hospital v Scanlon,* 473 U.S. 234, fn 44 (1985))

Bolte filed a Rule 52(b) Motion advising the District Court of its factual and statutory error on August 29, 2008 (D.C. Doc.#40; (Apdx-13)). It was denied (Doc.#42) and like Dismissals were later entered for the other Defendants as Doc's #47, #48, & #50.

Bolte's Opening Brief on appeal to the Circuit Court framed the Issue as:

> "Did the District Court apply the wrong statutory law for establishing and accepting Federal jurisdiction over state defendants?"

Applying the *right* law, serving STATES as STATES as opposed to "non-resident" INDIVIDUALS, results in a reversal of all District Court Orders and the admission of Bolte's lawsuit to federal jurisdiction. That is a fundamental procedure question about a

critical error which was the single stated reason for termination of the lawsuit by the District Court.(D.C.Doc.#39, p,4, ln's 3-4; et al; (Apdx-3, 8)) A pivotal foundation question which needed to be addressed and answered by the Appellate Court.

Nevertheless, on January 19, 2010, the Ninth Circuit Court, after reviewing "the record and the parties briefs", found "that the questions raised in this appeal are so insubstantial as not to require further argument" and summarily affirmed the District Court's flawed Dismissal Orders without considering, answering, and ruling on the Issue under Appeal. (Apdx-2)

Federal Questions First Raised

Federal jurisdiction was first sought with the filing of the Plaintiff's Complaint in the Washington District Court as Federal Questions alleging state violations of the 14th Amendment and Color-of-Law §1983 misconduct, specifically State *enforcement* of state law against a Citizen without inherent or Constituted authority to do so in abridgment of guaranteed Rights and Privileges.

Plaintiff\Appellant\Petitioner's filed Complaint attacks the unlawful *enforcement* of state law extra-jurisdictional and extra-territorial, not any Conclusions within the State Decisions. Substantial Constitution claims, not baloney sandwich litigation.

Plaintiff's Complaint also sought Declarations of jurisdictional invalidity under 28 U.S.C. §2201 and for Injunctive relief under §2202.

Reasons for Granting the Writ

When Wisconsin and Colorado openly invaded and usurped the authority of other jurisdictions, state and federal, they did so in violation of their own State Constitutions. The judgments they produced are void. Their actions are denials of due process violating the 14th Amendment enforcement prohibitions.

> "Courts are constituted by authority and they cannot (act) beyond the power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities. They are not voidable, but simply void, and this even prior to reversal." *Elliott v. Peirsol*, 1 Pet. 328, 340 (1828)

> "No judgment of a court is due process of law, if rendered without jurisdiction in the court." *Scott v. McNeal*, 154 U.S. 34, 46.

> A judgment is void when a "court's action amounts to a plain usurpation of power constituting a violation of due process." *Hoult v Hoult*, 57 F3d 1, 6 (1st Cir 1995)

Wisconsin, but three years before *O.L.R. v Bolte*, with most, if not all of the Seven Defendant Justices participating, acknowledged the supremacy of Federal law over Wisconsin law and then directly and deliberately countermanded itself by enforcing its State law against Bolte for his *pro hac vice* conduct in the Colorado Federal Court:

> "... the supremacy clause of the U. S. Constitution compels adherence to U. S. Supreme Court precedent on matters of federal law, although it means deviating from a conflicting decision of the state supreme court." (*State v Jennings*, 2002 WI 44, 252 Wis. 2d 228, 647 N.W.2d 142 (2002))

The above quote from *Jennings* can be found as an ANNOTATION to Article VII, §3 of the Wisconsin Constitution. The Justices cannot plead ignorance of the law they created.

O.L.R. v. Bolte is also in direct conflict with a prior United States Supreme Court Decision involving Wisconsin, *Wisconsin v Pelican*, 127 US 265, (1888):

> "Sovereign states cannot punish any delict committed extra territorium." (p. 271)
> "By the law of England and of the United States the penal laws of a country do not reach beyond its own territory ...and they must be administered in its own courts only, and cannot be enforced by the courts of another country." (p.289-90)

And another, *Keller v Wisconsin*, 374 U.S. 102 (1963) relying on *Sperry v. State of Florida ex rel. Florida Bar*, 373 U.S. 379, 384, 83 S.Ct. 1322, 1325, (1963), which declared:

> "But 'the law of the State, though enacted in the exercise of powers not contraverted, must yield' when incompatible with federal legislation. *Gibbons v. Ogden*, 9 Wheat. 1,

211, 6 L.Ed. 23."

The specific statutory federal law *O.L.R. v. Bolte* contradicted, in addition to the U.S. Supreme Court cases of *Keller* and *Sperry*, is 28 U.S.C. §1654 which gives the federal courts control over attorneys appearing there.

> [It needs to be noted that both *Keller & Sperry* were vacated by the United States Supreme Court, declared void for doing exactly what Bolte claims Wisconsin did --- for the third time. State judicial misconduct deemed "insubstantial" by the 9th Circuit.]

The Wisconsin Judgment is published in the Reporters as *O.L.R. v. Bolte*, 205 Wis2d 569, 699 NW2d 914 (2005). As such, it now stands as precedent supporting State extra-jurisdictional and extra-territorial enforcement of state law. That includes State interference with Federal litigation that Judge Wyatt, in the much cited *Spanos Case,* said the law forbids:

> "If lawyers, admitted to the bar of this Court, could not be paid for services rendered in actions pending in this Court because of a New York law or policy, then New York could effectively close down the national tribunals of justice." "The basic constitutional relationship between the national government and the states forbids such a result." (*Spanos v. Skouras*, 235 F.Supp 1, 11-14 (1964), aff'd 364 F.2d 161 (2d Cir. 1965), cert. denied, 385 US. 987, 87 S.Ct. 597, 17 L. Ed. 2d 448 (1966))

> ". . .as nearly a century of Supreme Court precedent makes clear, practice before federal courts is not governed by state court rules." (*In re Poole*, 22 F.3d 618, 622 (2000)

The Wisconsin Supreme Court knowingly and willfully rendered its *Bolte* Decision contrary to, and in Nullification of, that long standing body of law. It did so in reality, in an Official State Judgment, not in a classroom as a theoretical political philosophy. Wisconsin also blatantly defied the Orders of *Pelican* and *Keller, (Id).* Deliberate usurpation and nullification challenging fundamental Jurisdiction Law and Supreme Court authority can be the only reasons for having so adjudicated in open conflict with the principles of *Elliott, Scott,* and *Spanos* (*Id*) and in direct repudiation of *Pelican* and *Keller.* (*Id*). Wisconsin is a well informed willful recidivist, a three-time offender.

Those are "substantial" claims alleged in *Bolte's* Complaint (Compl. p. 1-2 and ¶¶ 19-29; Apdx A-19-20 and A-24-28) which are patently irrefutable, proven from the language of the Wisconsin and Colorado Judgments themselves, and which were before both lower federal courts. (Attach A to the Complaint; (Apdx-38, 39, ¶3)) The 9th Circuit Panel deemed them to be "insubstantial". In essence, it informed this Supreme Court that its Judgments are feckless? That Constitutional torts by States can be immunized by simply labeling them "insubstantial". (*City of Monterrey v Del Monte Dunes,* 526 U.S. 687, 709 (1999))

Plaintiff/Appellant Petitions this United

States Supreme Court, in its Supervisory capacity, to overrule the 9th Circuit Court's "insubstantial" finding, to Reverse the District Court Dismissals as being erroneously entered under the wrong Rule of Civil Procedure, to Summarily vacate *O.L.R. v. Bolte* as was done in *Keller v Wisconsin*, 374 U.S. 102 (1963), and the Colorado Judgment, and to Remand the case to the District Court for further proceedings.

Removing *O.L.R. v. Bolte* as a published precedent is of critical importance in a Nation with ever increasing numbers of multi-state litigators and other mobile professionals such as Doctors Without Borders. And for attorneys crossing state borders to support unpopular causes or to monitor voting. (*Spanos,* p.15, *Id*) To preclude jurisdictional chaos, This Court needs to reaffirm that States cannot usurp the Sovereignty of each other and\or of the Federal Government.

> A void judgment exists "where a court *usurps power* by rendering a judgment over matters beyond the scope of authority granted to it by its creators." (emphasis in quote) *United States v Zima*, 766 F2d 1153, 1159 (7th 1985)
>
> "Where there is clearly no jurisdiction over the subject-matter any authority exercised is a usurped authority, and for the exercise of such authority, when the want of jurisdiction is known to the judge, no excuse is permissible." *Bradley v. Fisher.* 80 U.S. 335 (Mem), 20 L.Ed. 646, 13 Wall. 335, (1871)
>
> As opposed to an internal at-home often foggy

evaluation of what is or is not the unauthorized practice of law or medicine, when the States of Wisconsin and Colorado misapplied their authority and power against Bolte without right and extra-jurisdictional, whatever be the conclusions reached, that amounted to unequivocal denial of due process, to irrefutable 14th Amendment abridgment of Citizens' Rights to work --- to Life, Liberty and the Pursuit of Happiness. (*Slaughter-House Cases* , 83 U.S. 36, 115 (Wall) (1872))

The Circuit Court Panel's rejection of the Bolte Appeal reveals that it was looking beyond the yes-or no Rule question presented by the Issue as that which resulted in a total dismissal is, by definition, substantial. After the Panel reviewed the "record and the parties' briefs", it knew that the Complaint was collaterally attacking the two state Judgments. The Panel's search for any "insubstantial" claims beyond that point was impermissible.

Under 28 U.S.C. §2201, Creation of Remedy, in cases involving "actual controversy" which Bolte's Complaint, taken together with its Attached official State Judgments, indubitably establishes, the only reasons federal jurisdiction can be denied are the "exceptions" specified in §2201 itself, and none of them are applicable to Bolte's Complaint.

> "28 USC Section 2201, Creation of Remedy
> (a) In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986, a proceeding under section 505 or 1146

> of title 11, or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of merchandise of a free trade area country (as defined in section 516A(f)(10) of the Tariff Act of 1930), as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such."

When there is a collateral attack on state judgments, there can be no preadmission "merits" evaluation or designation because that is the object of the litigation itself.

> "'No judgment of a court is due process of law, if rendered without jurisdiction in the court, or without notice to the party.' *Scott v. McNeal,* 154 U.S. 34, 46, 38 S. L. ed. 896, 901, 14 Sup. Ct. Rep. 1108. No state can, by any tribunal or representative, render nugatory a provision of the supreme law. And if the conclusiveness of a judgment of (sic) decree in a court of one state is questioned in a court of another government, Federal or state, it is open, under proper averments, to inquire whether the court rendering the decree or judgment had jurisdiction to render it.
>
> "Such is the settled doctrine of this court. In the leading case of *Thompson v. Whitman*, 18 Wall. 457, 468, 21 L. ed. 897, 901, the whole

question was fully examined in the light of the authorities. Mr. Justice Bradley, speaking for the court and delivering its unanimous judgment, stated the conclusion to be clear that the jurisdiction of a court rendering judgment in one state may be questioned in a collateral proceeding in another state, notwithstanding the averments in the record of the judgment itself. The court, among other things, said that if it be once conceded that 'the validity of a judgment may be attacked collaterally by evidence showing that the court had no jurisdiction, it is not perceived how any allegation contained in the record itself, however strongly made, can affect the right so to question it. The very object of the evidence is to invalidate the paper as a record. If that can be successfully done no statements contained therein have any force. If any such statements could be used to prevent inquiry, a slight form of words might always be adopted so as effectually to nullify the right of such inquiry." (*Old Wayne v McDonough*, 204 U.S. 8, 15-16 (1907))

States cannot unilaterally violate, alter and usurp this Nation's most fundamental laws of Sovereignty and jurisdiction, and of Supremacy when they conflict. Nor can their courts abrogate United States Supreme Court Decisions.

> "Courts as well as citizens are not free 'to ignore all the procedures of the law,' to use the Court's language. The 'constitutional freedom' of which the Court speaks can be won only if judges honor the Constitution." *Walker v City*

of Birmingham, 388 US 307, 337-338 (1967)

That discipline applies to the Federal courts as well. Judge Martinez had a sworn obligation to "honor" and apply the clear fact-appropriate Rule of Procedure, the Appellate Panel *not* to ignore his misapplication of the law by turning a blind eye. Both were sworn to afford Bolte his Remedy in federal court as endowed upon him as a United States Citizen under the 14th Amendment and 28 U.S.C. §2201.

Any self-perceived high motives and good intentions of the State Courts and Judges do not alter the real life fact that a United States Citizen who sought and received permission to work *pro hac vice* before a federal tribunal, who was described by the Defendant Wisconsin Supreme Court as "undoubtedly skilled . . . honest, sincere and hard working in all the services he rendered . . . in obtaining a multi-million dollar recovery" for his client (Wisconsin Judgment, par's 39-41; Apdx-38, 50-51) and who followed the Federal Service Rules to the letter, was victimized by *judicial assaults* on his Constitutional Rights. (*Slaughter-House Cases, Id*) That scenario does not fit anyone's definition of Due Process and Equality.

The Caption of this lawsuit speaks volumes. A solitary lawyer opposed by two States, eight Judges, and the staffs of two Attorney Generals using all their resources to *keep this lawsuit out of Federal court*, to preclude being held accountable for wrongfully enforcing their state laws against Bolte without right and beyond their jurisdictions in

violation of the 14th Amendment. Courts keeping a Citizen out of court. Courts acting in abrogation of Supreme Court and Constitutional Law.

Bolte does not ask This Court for favoritism as the underdog. He does ask for *his day in court* where the "substance" of his claims can be litigated. He Petitions for an opportunity to recover his identity as a working, law-abiding Citizen in the eyes of his children and grandchildren. He does ask that the Law, as opposed to those who administer it, be given Supremacy.

While this Court can correct injustices for only one Citizen today, the positive ripple effect of the United States Supreme Court enforcing a Constitutional and Statutory Right of access to the courts will be enjoyed by countless others tomorrow. As a bonus, Declaring the official State Judgments to be *patently void as a matter of law* from irrefutable official state records will most certainly squelch like State power plays in the future.

Conclusion

For the foregoing reasons, Petitioner Richard Bolte respectfully requests that this Court grant his Petition for a Writ of Certiorari, that the Circuit and District Court rulings be summarily reversed, that the State Judgments be Declared void as a matter of law, and that the case be remanded to the District Court for further proceedings before a new Judge.

Dated this 24th day of March, 2010.

Respectfully submitted,

/s/_____

Richard Bolte, Petitioner, *pro se*
3805 NE 115th St.
Seattle WA 98125
206-817-6398
rick.bolte@gmail.com

APPENDIX Apdx-1

Circuit Court ORDER Apdx-2

District Court DISMISSAL Apdx-3

Rule 52(b) Motion Apdx-13

Complaint Apdx-18

Wisconsin Judgment (attach A) Apdx-38

Colorado Judgment (attach D) Apdx-55

FILED

JAN 19, 2010

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 08-35941
D.C. No. 2:08-cv-00821-RSM
Western District of Washington,
Seattle

RICHARD BOLTE,
Plaintiff - Appellant,

v.

ORDER

WISCONSIN STATE SUPREME COURT; et al.,
Defendants - Appellees.

Before: SILVERMAN, PAEZ and BEA, Circuit Judges.

A review of the record and the parties' briefs demonstrate that the questions raised in this appeal are so insubstantial as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam) (stating standard).

Accordingly, we summarily affirm the district court's October 20, 2008 orders.

The pending motion to expedite is denied as moot.

AFFIRMED.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RICHARD BOLTE,
Plaintiff,
v.
STATE OF WISCONSIN SUPREME COURT, CHIEF JUSTICE SHIRLEY S. ABRAHAMSON; CHIEF JUSTICE SHIRLEY S. ABRAHAMSON, personally; JUSTICE JON P. WILCOX, personally; JUSTICE ANN WALSH BRADLEY, personally; JUSTICE N. PATRICK CROOKS, personally; JUSTICE DAVID PROSSER, JR., personally; JUSTICE PATIENCE D. ROGGENSACK, personally; JUSTICE LOUIS B. BUTLER, personally; STATE OF COLORADO EL PASO COUNTY DISTRICT COURT, JUDGE THERESA M. CISNEROS; JUDGE THERESA M. CISNEROS, personally; EL PASO COUNTY, a municipal corporation; CAROL KOSCOVE,
Defendants.

CASE NO. C08-821RSM
ORDER ON WISCONSIN DEFENDANTS' MOTION TO DISMISS

Plaintiff Richard Bolte, a Washington resident, filed this complaint for damages pursuant to 42 U.S.C. §§ 1983, 1985 and 1988, asserting that defendants have denied him his rights and privileges under the Fourteenth Amendment to the United States Constitution. This matter is before the Court for consideration of a motion to dismiss filed by defendants State of Wisconsin Supreme Court and

the seven justices of that court named as individual defendants in this action (together, "the Wisconsin defendants"). Dkt. # 12. Plaintiff has opposed the motion. The Court has fully considered the parties' memoranda and attached exhibits, and relevant case law. For the reasons set forth below, the motion shall be granted.

BACKGROUND AND PROCEDURAL HISTORY

This case arises from disciplinary proceedings instituted against plaintiff, a member of the bar of the State of Wisconsin since 1961. He was on inactive status and residing in Colorado at the time of the events described below. Complaint, Dkt. # 1, Attachment A, p. 2. This is not the first time plaintiff has sued these and other defendants over the disciplinary proceedings or the events that led to those disciplinary proceedings. The factual background and subsequent legal proceedings were well summarized by the Seventh Circuit Court of Appeals in a decision dated April 18, 2007, which the Court quotes here for the benefit of those not familiar with the case.

> In 1994, Mr. Bolte entered into a contract in Colorado with Carol Koscove. In this contract Mr. Bolte agreed to review the royalties due Koscove under a mineral lease between her and an oil company. At the time Mr. Bolte contracted with Koscove, he was an inactive member of the Wisconsin Bar. Mr. Bolte began performing under the contact, and he later obtained permission from the United States District Court for the District of Colorado to appear *pro hac vice* in a federal lawsuit Koscove brought against the oil company. The parties eventually settled, but

Koscove refused to pay Mr. Bolte the entire amount he billed under their contract. In 1996, Koscove sued Mr. Bolte in a Colorado court for recision of their contract, arguing that he engaged in the unauthorized practice of law in Colorado and thus the contract was unenforceable. In 2001, the Colorado Court of Appeals issued a final decision rescinding the contract and ordering Mr. Bolte to return the money he had been paid.

Mr. Bolte then brought suit in the Western District of Wisconsin against Koscove, her lawyers, the Colorado judge who presided over the recision action and the county in which the judge sat. *See Bolte v. Koscove*, No. 05-2774, 2005 WL 3113460 at *1 (7th Cir. Nov. 22, 2005). Mr. Bolte claimed that the Colorado judgment rescinding his contract with Koscove deprived him of property without due process, interfered with his contractual rights, and denied him his right to practice law. *Id.* The district dismissed for lack of subject-matter jurisdiction under the *Rooker-Feldman* doctrine, see *D.C. Ct. App. v. Feldman*, 460 U.S. 462, 476, 482-83 (1982); *Rooker v. Fid. Trust Co.*, 263 U.S. 413, 415-16 (1923). We affirmed that judgment. *See Bolte*, 2005 WL 3113460 at *1-2. We also sanctioned Mr. Bolte under Federal Rule of Appellate Procedure 38 for filing a frivolous appeal. *Id.*, at *2.

Meanwhile, Koscove submitted a grievance against Mr. Bolte in Wisconsin. In 2003, the Office of Lawyer Regulation in Wisconsin initiated disciplinary proceedings against Mr. Bolte for the unauthorized practice of law in

> Colorado. In 2005, the Supreme Court of Wisconsin issued a final disciplinary decision finding that Mr. Bolte had engaged in the unauthorized practice of law that was not incident to his *pro hac vice* admission to the District of Colorado, and that he had transferred property to avoid collection on the judgment Koscove obtained in Colorado. *See In re Disciplinary Proceedings against Bolte*, 699 N.W.2d 914 (Wis. 2005). The Supreme Court of Wisconsin publicly reprimanded Mr. Bolte and required him to pay the costs of his disciplinary proceeding. Mr. Bolte then filed this suit in the Eastern District of Wisconsin. He claims under 42 U.S.C. § 1983 that the Supreme Court of Wisconsin and its justices lacked jurisdiction over the disciplinary proceeding and thus violated his federal constitutional rights by issuing the reprimand. He alleges, too, that Koscove was a "collaborator and joint actor" with the justices. Additionally, Mr. Bolte names Koscove and the justices in supplemental, state tort claims based on their roles in his disciplinary proceeding. Mr. Bolte seeks to void both the reprimand issued in Wisconsin and the Colorado judgment. He also seeks damages.

Dkt. # 15, Exhibit 3, *Bolte v. Supreme Court of Wisconsin, et al.*, 230 Fed.Appx. 586 (7th Cir.(Wis.) 2007); *cert. denied*, 127 S. Ct. 3020 (2007); *rehearing denied*, 128 S.Ct. 23 (2007). The Seventh Circuit Court of Appeals upheld the trial court's dismissal of plaintiff's suit. *Id.*

From the above recitation of facts, it appears

that this is the third suit filed by plaintiff in federal court, in what one of those courts has characterized as "a relentless effort to recover his dignity and money lost in a judgment against him in a Colorado state court." *Bolte v. Koscove*, 2005 WL 1290253 at *1 (W.D.Wis. 2005). In the first suit, filed in the Western District of Wisconsin, he named as defendants Carol Koscove and various judges and attorneys involved in the Colorado state court proceedings. *Id.* In the second suit, filed in the Eastern District of Wisconsin, he named as defendants Carol Koscove and the justices of the Supreme Court of Wisconsin. *Bolte v. Supreme Court of Wisconsin, et al.*, 230 Fed.Appx. 586 (7th Cir. 2007). Plaintiff carried his appeals in both the Wisconsin cases to the United States Supreme Court, which in each instance denied his petition for certiorari. *Bolte v. Koscove*, 546 U.S. 1195 (2006); *Bolte v. Supreme Court of Wisconsin*, 127 S. Ct. 3020 (2007).

In the suit filed in this district, plaintiff names as defendants the Colorado judge and the county in which the court was located, the Wisconsin Supreme Court and all the justices of that court, and Carol Koscove. Complaint, Dkt. # 1. The complaint alleges absolutely no basis for the jurisdiction of this Court over this matter or venue in this district, nor does any appear on the face of the complaint. No defendant resides in this district, nor did any of the events giving rise to plaintiff's claims occur here. *See*, 28 U.S.C. § 1391(b).

In the motion now before the Court, the Wisconsin Supreme Court and the individual justices move for dismissal for lack of subject matter jurisdiction and personal jurisdiction. *See*,

F.R.Civ.Proc.12(b)(1), 12(b)(2). They assert several alternative grounds for dismissal, namely the *Rooker-Feldman* doctrine, Eleventh Amendment immunity, judicial immunity, lack of personal jurisdiction, and claim preclusion. As the question of personal jurisdiction is dispositive of these defendants' motion, the Court need not reach the other bases asserted. The Court notes, however, that the two Wisconsin district courts each found the *Rooker-Feldman* doctrine applicable to bar consideration of plaintiff's claims. These rulings were upheld on appeal and the United States Supreme Court declined to review them. Plaintiff's filing in this district appears to be an improper attempt to circumvent these rulings, and cannot be condoned by this Court.

DISCUSSION

The Wisconsin defendants, as non-residents of this forum, assert that the Court lacks jurisdiction over them because neither the Wisconsin Supreme Court nor any of the seven justices has the required minimum contacts with the State of Washington to justify jurisdiction under Washington's long-arm statute. Plaintiff opposes this argument, contending that the long-arm statute analysis is applicable only in diversity cases, not cases brought under federal question jurisdiction pursuant to 28 U.S.C. § 1331. Plaintiff's Opposition, Dkt. # 20, p. 11. According to plaintiff, "Bolte's filed claims are direct actions under federal law and this federal court can acquire personal jurisdiction over any party within the nation wherever residing or located." *Id.* Plaintiff is incorrect.

In federal question cases, a court has personal jurisdiction over non-resident defendants only if they

are amenable to service of process and the exercise of jurisdiction comports with due process. *Omni Capital International v. Rudolf Wolff & Co.*, 484 U.S. 97,111 (1987). Thus, "[w]hen subject matter jurisdiction is premised on a federal question, a court may exercise specific jurisdiction over a defendant [only] if a rule or statute authorizes it to do so and the exercise of such jurisdiction comports with the
constitutional requirements of due process." *Myers v. Bennett Law Offices,* 238 F. 3d 1068, 1072 (9th Cir. 2001).

It is plaintiff's burden to establish this court's personal jurisdiction over the non-resident defendants. *Cubbage v. Merchent,* 744 F. 2d 665, 667 (9th Cir. 1984); *cert. denied,* 470 U.S. 1005 (2005). Plaintiff has pointed to no provision in 42 U.S.C. § 1983, § 1985, or § 1988 which authorizes nationwide service of process, nor has he set forth any other statute which would provide for jurisdiction over the non-resident defendants in this matter. As for an authorizing rule, Federal Rule of Civil Procedure 4(k)(1) provides that "[s]ervice of a summons . . . is effective to establish jurisdiction over the person of a defendant: (A) who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located. . ." F.R.Civ.Proc. 4(k)(1)(A). Thus, in order to determine whether this Court may exercise jurisdiction over the non-resident Wisconsin defendants, it must look to the applicable rules of the forum state, in other words, Washington's long-arm statute.

Jurisdictional inquiries under state law and federal due process merge into one analysis when the state's long-arm statute is "co-extensive with

federal due process requirements." *Roth v. Garcia Marquez*, 942 F. 2d 617, 620 (9th Cir. 1991). By statute, Washington permits the assertion of general jurisdiction over a foreign defendant "doing business" within the state. RCW 4.28.080(10). The Washington courts have ruled that the "doing business" requirement "subsumes the due process requirement." *Hartley v. American Contract Bridge League*, 61 Wash. App. 600, 605 (1991); *citing Hein v. Taco Bell*, 60 Wash. App. 325, 330 (1991). Therefore, personal jurisdiction over the Wisconsin defendants may be analyzed under federal due process requirements.

The Due Process Clause of the Constitution requires that a defendant have "certain minimum contacts" with the forum state "such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *International Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945). The contacts must be such that the Supreme Court of Wisconsin and its individual justices "should reasonably anticipate being haled into court" in this state. *Sher v. Johnson*, 911 F. 2d 1357, 1361 (9th Cir. 1990); *quoting World Wide Volkswagon Corp. v. Woodson*, 444 U.S. 286, 297 (1980). The minimum contacts requirement performs two functions: it "protects the defendant against the burden of litigating in a distant or inconvenient forum. And it acts to ensure that the States[,] through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system." *Id.* at 292.

In applying these requirements, the courts have created two jurisdictional concepts: general and specific jurisdiction. *Reebok International, Ltd., v.*

McLaughlin, 49 F. 3d 1387, 1391 (9th Cir. 1995). A court may exercise general jurisdiction over a defendant when that defendant's contacts with the forum are continuous, systematic, and substantial. *Id.* Specific jurisdiction may be found when the cause of action arises out of a defendant's contact with or activities in the forum state. *Roth*, 942 F. 2d at 620.

Courts in the Ninth Circuit use a three-part test to determine if personal jurisdiction may be asserted over a non-resident defendant: (1) the defendant must perform some act, or consummate some transaction, or otherwise purposefully avail itself of the privilege of conducting activities in the forum state: (2) the plaintiffs' claim must arise out of or result from the defendant's forum-related activities; and (3) the exercise of jurisdiction must be reasonable. *Medinah Mining, Inc., v. Amunategui,* s237 F. Supp.2d 1132, 1134 (D.Nev. 2002); *citing Bancroft & Masters, Inc. v. Augusta National Inc.*, 223 F. 3d 1082 (9th Cir. 2000). Plaintiff has failed to meet his burden of establishing any of these elements. These defendants have neither performed any act, consummated any transaction, nor purposefully availed themselves of the privilege of conducting business here in the State of Washington. They did not conduct any forum-related activities which gave rise to plaintiff's claims.1 This Court's exercise of jurisdiction over the Wisconsin defendants on the sole basis of plaintiff's current presence here would be wholly unreasonable.

Accordingly, the Wisconsin defendants' motion to dismiss for lack of personal jurisdiction is GRANTED, and these defendants are hereby DISMISSED from this action.

Dated this 25 day of August, 2008.

/s/
RICARDO S. MARTINEZ
UNITED STATES DISTRICT JUDGE

---

1 Plaintiff contends that defendants' actions interfered with his civil rights, which are "property rights" and present in this district because he resides here. Plaintiff's Opposition, Dkt. # 20, p. 11. That argument is legally flawed, but even if it were sound, the current location of plaintiff's "property" is irrelevant under the analysis set forth above.

Case 2:08-cv-00821-RSM Document 39 Filed 08/25/2008

Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Civil Action No.2:08-cv-00821-RSM

Richard Bolte,
Plaintiff,

v.

State of Wisconsin Supreme Court, et al
Defendants.

MOTION under F.R.C.P. 52(b)
TO AMEND
ORDER ON WISCONSIN DEFENDANT'S
MOTION TO DISMISS (Doc. 39)

On August 25, 2008, Judge RICARDO S. MARTINEZ made findings and drew conclusions in support of his ORDER granting WISCONSIN DEFENDANT'S MOTION TO DISMISS. Plaintiff BOLTE, pursuant to F.R.C.P. 52(b), Moves the Court to amend those findings, make additional findings as appropriate, and alter said ORDER accordingly.

The ORDER begins with the stated premise that the principle Defendant State of Wisconsin is a "non-resident". (page 4, lns 10, 18). That is

inaccurate and makes the ORDER'S supporting case law and statutes protecting people and federal due process requirements irrelevant. Wisconsin is a "political body" (*Ex Parte Virginia, below*), not a "citizen", not a "person", not an "individual", not a "resident", and therefore not a "non-resident". States do not "reside in" or "inhabit" anywhere from which to measure or locate non-residency. It is not relevant with regard to states which are in the Union.

> "A state is not a citizen. And under the judiciary acts of the United States it is well settled that a suit between a state and a citizen or a corporation of another state is not between citizens of different states, and that the circuit court of the United States has no jurisdiction of it, unless it arises under the constitution, laws, or treaties of the United States." *Postal Telegraph Cable Co v. State of Alabama,* 155 U.S. 482, 487 (1894)
>
> "Nor could a suit against a State be brought under diversity jurisdiction, because a State is not a citizen of itself for such purposes." *Atascadero State Hospital v Scanlon,* 473 U.S. 234, fn 44 (1985)

It is undisputed that Bolte's filed case against the State of Wisconsin "arises" under the 14th Amendment, §1983, and all federal laws attendant thereto:

> "[T]he prohibitions of the Fourteenth Amendment are addressed to the States. . . . They have reference to actions of the political body denominated a State, by whatever instruments or in whatever modes that action

> may be taken." (*Ex Parte Virginia,* 100 U.S. 339, 346 (1880))

Due process rights are afforded to citizens under the Constitution, not states. The state of Wisconsin and its agents are not entitled to the diversity location evaluations and attending due process considerations in the cases presented and relied upon by the Court in its ORDER.

The quite contorted *Omni Case* relied on by the Court (page 4, ln 19) dealt with service on a foreign *Individual* under Rule 4(f) and slid quickly into "Rule 4(e) Serving an *Individual* Within a Judicial District of the United States." (p. 104-5) The cases relied upon by the Court dealing with "*individuals*" and diversity considerations are not relevant to jurisdiction over the STATE of Wisconsin but the Court's quote from the *Myers Case* (page 4, ln 20-24) does provide the fundamentals for establishing federal jurisdiction:

> "'Thus, '[w]hen subject matter jurisdiction is premised on a federal question, a court may exercise specific jurisdiction over a defendant [only] if a rule or statute authorizes it to do so and the exercise of such jurisdiction comports with the constitutional requirements of due process.'" *Myers v. Bennett Law Offices,* 238 F. 3d 1068, 1072 (9th Cir. 2001).

That describes the statutory procedure that has been followed for the Principle Defendant State of Wisconsin in this case:

"Rule 4 (j) Serving a Foreign, State, or Local Government

(1) * * *

(2) State or Local Government. A state, a municipal corporation, or any other state-created government organization that is subject to suit must be served by:

(A) delivering a copy of the summons and the complaint to its chief executive officer; (B) serving a copy of each in the manner prescribed by that state's law for serving a summons or like process on such a defendant."

That has been accomplished. (Doc entry #4)

"Rule 4 (k) Territorial Limits of Effective Service

(1) * * *

(2) Federal Claim Outside State-Court Jurisdiction. For a claim that arises under federal law, serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant if:

(A) the defendant is not subject to jurisdiction in any state's courts of general jurisdiction; and

(B) exercising jurisdiction is consistent with the United States Constitution and laws."

No state has jurisdiction "of itself" nor is it subject to the jurisdiction of a sister state. Trying federal question cases in federal court is consistent with the Constitution and laws of this Nation. Federal Courts are, in fact, the *only* place to try states for violations of the 14th Amendment. It expressly constrains states.

Personal jurisdiction over the Wisconsin Defendants has been established in this case in this federal court.

The finding that Wisconsin is a "non-resident" is in error and needs to be corrected with the balance of the ORDER amended accordingly. Wisconsin's

Motion to Dismiss for lack of personal jurisdiction needs to be denied.

Date, August 29, 2008
____/s/_____
Richard Bolte

The Honorable

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Civil Action No. _C08 0821

Richard Bolte,
Plaintiff,

v.

State of Wisconsin Supreme Court, Chief Justice Shirley S. Abrahamson; Chief Justice Shirley S. Abrahamson, personally; Justice Jon P. Wilcox, personally; Justice Ann Walsh Bradley, personally; Justice N. Patrick Crooks, personally; Justice David Prosser, Jr., personally; Justice Patience D. Roggensack, personally; Justice Louis B. Butler, personally; State of Colorado El Paso County District Court, Judge Theresa M. Cisneros; Judge Theresa M. Cisneros, personally; El Paso County, a municipal corporation; Carol Koscove.
Defendants.

COMPLAINT

STATEMENT OF THE CASE

On July 19, 2005, the State of Wisconsin enforced State of Wisconsin law against United States Citizen Richard Bolte for his conduct when in Colorado. It did so entirely without right and beyond Wisconsin's Sovereign power, authority, and jurisdiction, contrary to the Constitution, contrary to the 14th Amendment, contrary to federal statutory law, and contrary to two direct Orders of the United States Supreme Court.

On April 6, 1998, the State of Colorado El Paso County District Court enforced State of Colorado law against United States Citizen Richard Bolte for his conduct in a federal jurisdiction. It did so entirely without right and beyond Colorado's Sovereign power, authority, and jurisdiction, contrary to the Constitution, contrary to the 14th Amendment, contrary to federal statutory law, and contrary to the law of the United States Supreme Court.

The enforcement of state law without jurisdiction by both rendering courts abridged the privileges and immunities of Bolte and denied due process and equal protection of the law to him.

The beneficiary of the Colorado Judgment, defendant private party Carol Koscove, collaborated with the Colorado court and then collaborated with and linked the two states with each other and with herself in violation of 42 U.S.C. §1983 and §1985 when she filed a grievance, incorporating the Colorado judgment, against Bolte in Wisconsin. The defendant Justices and Judge are sued personally while serving in their official capacities.

This suit makes claims for declaratory and injunctive relief and the recovery of damages solely under the Constitution and laws of the United States.

THE PARTIES

1. Plaintiff Richard Bolte (BOLTE) resides and is situated in the City of Seattle, King County, State of Washington. At all times herein relevant he was and is a citizen of the United States endowed with inalienable and Constitutional rights of freedom, liberty, right to work and contract for work, and to receive compensation for his labors. As a *pro hac vice* admitted attorney to the Colorado federal District Court royalty case involving KOSCOVE and ARCO Oil company he acquired additional statutorily protected rights and property interests under 28 U.S.C. §1654 all of which he was entitled to exercise free from arbitrary and capricious intrusions or interference by individuals, officials and courts in and of the States of Wisconsin and Colorado.

2. Both Courts are being sued as state enforcement and adjudicative bodies lacking power, authority and jurisdiction (1) extra territorium, and (2) in federal jurisdictions.

3. Defendants Shirley S. Abrahamson, Jon P. Wilcox, Ann Walsh Bradley, N. Patrick Crooks, David Prosser, Jr., Patience D. Roggensack, and Louis B. Butler (JUSTICES) are being sued personally while acting in their official capacities as JUSTICES of the Wisconsin Supreme Court, and\or under color of law, administering, enforcing, and adjudicating Wisconsin law. At all times relevant and material they presided over the case of (*O.L.R. v. Bolte,* 2003AP1184-D, 2005 WI 132, 205 Wis2d

569, 699 NW2d 914 WISCONSIN DECISION -- Attachment A)

4. Defendant El Paso County (COUNTY) was at all times material a municipal corporation duly licensed and empowered to manage and conduct judicial matters and processes in and for the State of Colorado. At all times material, it employed, used, and controlled Defendant CISNEROS as a District Court Judge in El Paso County and knew or should have known that she had, prior to the Koscove\Bolte Colorado litigation, ignored and violated the laws she had been sworn to uphold and apply.

5. Defendant, Theresa M. Cisneros (CISNEROS), held office as Judge of District Court Division 8, County of El Paso, State of Colorado. At all times relevant and material she presided as Judge over said court in the case of CAROL KOSCOVE v. RICHARD BOLTE, Case No 96CV2233, Division 8, a contract dispute, and over supplemental proceedings ensuing therefrom.

6. Defendant Carol Koscove (KOSCOVE) was the plaintiff against BOLTE in the Colorado state District Court case before JUDGE CISNEROS, the beneficiary of that Decision, and the ethics Grievant against BOLTE in the Wisconsin case. She is being sued as the private party who caused, precipitated, participated in, and collaborated in the unlawful Colorado and Wisconsin DECISIONS and Constitutional torts perpetrated by the named Courts, Judge and Justices. She is also being sued under pendent jurisdiction.

7. All Defendants are being sued as collaborators and conspirators acting together and jointly with each other to deprive BOLTE of rights and privileges under the laws as prohibited by 42 U.S.C. §1985.

JURISDICTION

8. Jurisdiction over this cause of action is invoked under 28 U.S.C. §1331 in that the cause of action raises Federal question and jurisdiction issues under the Constitution and Amendments thereto and other laws of the United States where the defendants have wrongfully and tortiously enforced, and collaborated to enforce, state laws in a federal jurisdiction and in jurisdictions other than their own.

9. Jurisdiction is invoked under 28 U.S.C. §1343(a) in that a cause of action arises under 42 U.S.C. §1983, §1985, & §1988, statutes of the United States which protect the plaintiff from being deprived, under color of state law, of his rights, privileges, and immunities as a citizen of the United States under the Constitution, the Fourteenth Amendment thereto, and federal laws.

10. Supplemental jurisdiction is invoked under 28 U.S.C. §1367 for common law tortious interference with contract rights and future contract rights, wrongful execution against his property, defamation and libel, and intentional infliction of emotional distress arising out of the same set of operative facts as alleged for the federal questions and federal statutory violations.

11. Damages are sought for violations under the Constitution, the Fourteenth Amendment, and under 42 U.S.C. §§1983, 1985 & 1988. Declarations of jurisdictional invalidity are sought under 28 U.S.C. §2201. Injunctive relief is sought under 28 U.S.C. §2202 and under the expressly authorized exception to the Anti-Injunction Act, 28 U.S.C. §2283 (*Mitchum v Foster,* 407 U.S. 225 (1972), imposing permanent injunctions to prevent the Colorado

District Court of El Paso County, its Judge Theresa Cisneros, the Wisconsin Supreme Court, its JUSTICES, individually and/or collectively, directly or under color of law, from depriving citizens of the United States of rights, privileges, and immunities secured by the Constitution of the United States, Amendments thereto, and other laws of the United States.

ALLEGATIONS

12. On July 19, 2005, the State of Wisconsin, by and through its named Justice Defendants (JUSTICES), each at the time Justices of the Supreme Court of Wisconsin and acting personally, unlawfully enforced State of Wisconsin law without right and beyond its jurisdiction in a federal jurisdiction and extra territorium contrary to the 14th Amendment when it, and the individuals while functioning as state officials and\or under color of law, unlawfully enforced, Wisconsin state law against Plaintiff Richard Bolte for his conduct and behavior in Colorado. The irrefutable proof of Wisconsin's malfeasance is found in Paragraph 3 of its recorded DECISION and JUDGMENT (Attachment A) which finds that "The events giving rise to this proceeding occurred in Colorado, where Bolte was then residing."

13. The Sovereign State of Wisconsin has no inherent, Constituted, or statutory power, authority or jurisdiction, and acquired none over subject-matter or persons in Colorado or in a federal jurisdiction. Sovereign states cannot punish any delict committed extra territorium. (*Wisconsin v Pelican*, 127 U.S. 265, 289-91 (1888)) The Judgment is invalid, void *ipso facto*.

14. The Wisconsin disciplinary proceedings were

initiated, precipitated and caused by Defendant Carol Koscove (KOSCOVE) when she filed a bogus ethics grievance charge against BOLTE with the Wisconsin Board of Professional Responsibility. The grievance complaint included a patently invalid Colorado court judgment (CISNEROS DECISION - Attachment D) which was accepted and relied upon by the Wisconsin Court and its JUSTICES.

15. The Colorado Judgment (Attachment D) is void *ipso facto*. Colorado had no right, power or authority, inherent or Constituted, to enforce its penal law in a federal matter, in the **Federal** District Court of Colorado where BOLTE was admitted *pro hac vice* and where the Colorado state court Judgment specifically found that what Bolte did was "counsel, advise, and assist (Koscove) with her legal rights against ARCO." (p. 3) (*In re McCue*, 211 Cal. 57, 66, 293 P. 47, 51 (1930); *Sperry v. Florida ex rel. Florida Bar*, 373 U.S. 379 (1963); *Spanos v Skouras*, 235 F.Supp 1, 13 (1964) aff'd in 364 F.2d 161 (2d Cir. 1965), cert. denied, 385 U.S. 985 (1966)) For the same reasons, the Wisconsin Judgment is doubly invalid. (*Keller v. Wisconsin*, 374 U.S. 102 (1963))

16. State courts are constituted by authority and they cannot act beyond the power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities. They are simply void. (*Elliott v. Peirsol*, 1 Pet. 328, 340; *Old Wayne Life Ass'n v. McDonough*, 204 U.S. 8 (1907))

17. The misconduct of both States, enforcement and adjudicative in nature, is described by the United States Supreme Court in countless cases as actionable Constitutional torts. (*City of Monterrey v Del Monte Dunes*, 526 U.S. 687, 709 (1999)) Both

Courts, acting by and through their judiciary, irrefutably acted beyond the power delegated to them. Their judgments are patently void. They constitute denial of due process and equal protection to BOLTE. (*Burnham v. Superior Court of Cal., Marin County*, 495 U.S. 604, 608-9 (1990); *Old Wayne, Id* p. 15; *Pennoyer v. Neff*, 95 U.S. 714, 732 (1878))

18. Koscove's grievance letter (GRIEVANCE) is Attachment B. The Koscove/Bolte employment agreement of November 22, 1998 (AGREEMENT), referenced in and included with the GRIEVANCE letter, is Attachment C. The Colorado decision (CISNEROS DECISION) of April 6, 1998, also referenced in and included with the GRIEVANCE letter, is Attachment D. Plaintiff represents that Attachments A thru D, are relevant, two are official records, and all are incorporated herein as though set forth in full herein.

19. The acts of the Courts, the JUSTICES and Judge CISNEROS were both enforcement and judicial in nature. They exercised them directly and\or under color of law, in the clear absence of, beyond, and in contradiction of all inherent, Constituted and statutory authority, power, and jurisdiction, and acquired no subject-matter or personal jurisdiction over Bolte then living and acting in Colorado and in the federal court there. As such, they are not entitled to any immunity, judicial or otherwise, from suit or damages except that protection to which the State of Wisconsin might be afforded by the Eleventh Amendment.

20. Acting as state and county officials and\or under color-of-law, the judicial Defendants as individuals, and in the name of their states,

tortiously deprived BOLTE of his rights under The Constitution, The Fourteenth Amendment, and the laws of the United States. While doing so, the JUSTICES accepted, adopted and acted upon the facially and patently invalid CISNEROS DECISION submitted by KOSCOVE and thereby acted jointly, in collaboration with, and conspiratorially with each other and with KOSCOVE, Judge Cisneros and the El Paso County Court in violation of 42 U.S.C. §1985(3)

21. BOLTE brings this action against the Defendants who, individually and jointly and in collaboration with each other, directly and\or under color of law, in the absence of all jurisdiction, deliberately, willfully, intentionally, purposefully and knowingly violated his civil rights causing him personal and property damages.

22. The conduct of the courts, judge, and justices alleged hereinabove deals with federal question and jurisdiction issues. By operating, conducting and applying the named courts in their enforcement and adjudicative capacities without Constituted and\or inherent jurisdiction, wholly without personal and subject-matter jurisdiction, and beyond their authority, the Defendants, public and private, individually and collectively denied BOLTE his due process and equal protection rights and privileges under the Constitution, the Fourteenth Amendment thereto, and federal law. They committed Constitutional torts. There are no state remedies available for redressing the wrongs BOLTE has suffered by the action of the highest court in the state of Wisconsin and the state remedies have been exhausted in Colorado.

23. The judicial officials knew, or should have

known, that they were personally and\or officially operating and conducting their courts in direct contravention of a matter which Congress has given to federal courts exclusively through 28 U.S.C. §1654, and in which the Supreme Court of the United States had previously ordered the Supreme Court of Wisconsin not to do for lack of jurisdiction. (*Keller v Wisconsin*, 374 U.S. 102 (1963) relying upon *Sperry v Florida*, 373 U.S. 379 (1963))

24. The courts and judicial Defendants, with acquiescence in the conduct of each other, did individually and jointly engage, combine, and collaborate by concerted, cooperative, conspiratorial, and joint action with KOSCOVE, to (1) act on and enter judgments in a matters exclusively within the jurisdiction of the federal courts under 28 U.S.C § 1654, (2) abridge Plaintiff's due process and privilege and immunity rights under the Constitution as a citizen of the United States (U.S. Constitution Article IV, §2; Amendment XIV, § 1), (3) hinder and obstruct Plaintiff's free use of a license and court admission granted to him under an act of Congress (28 U.S.C § 1654; U.S. Constitution Article IV, §2; Amendment XIV, § 1), (4) interfere with and nullify Plaintiff's property rights and privileges under the guise of state police power contrary to U.S. Constitution Article I, § 10, (5) apply Colorado and Wisconsin statutes beyond and outside the authority of the Colorado and Wisconsin Courts in a manner repugnant to and incompatible with the Constitution and federal laws (U.S. Constitution Article I, § 10, Article IV, §2; Article VI; Amendment XIV, § 1; 28 U.S.C § 1654), and (6) collaborate contrary to 42 U.S.C. §1983 & §1985.

25. In doing all of the acts alleged, the judicial

Defendants were acting officially and personally in their roles as state officials and\or under color of law in furtherance of the above-described unlawful behavior. In that they were acting in their enforcement capacities, and adjudicative capacities absent all jurisdiction, this action is brought against them personally for damages, declaratory and injunctive relief. .

26. The Wisconsin penal DECISION was set forth and published in public records, legal Reporters, Bar publications, and state newspapers. It is defamatory *per se* and caused, and continues to cause, great harm and damage to BOLTE.

27. In doing the acts alleged, each of the named defendants acted as agent for and on behalf of the other parties and were acting in furtherance of their collaboration.

28. The concerted conduct of the Judicial Defendants was deliberate, purposeful, knowing, capricious, mistaken, and willful evincing and demonstrating an intentional disregard of BOLTE'S due process rights. The conduct of KOSCOVE was deliberate, knowing, willful, wanton and malicious and demonstrated an intentional disregard of Bolte's rights. Punitive damages are appropriate against all personal Defendants.

29. As a direct and proximate result of the above-described unlawful and improper conduct of the Defendants, and of KOSCOVE for the common-law charges alleged hereinafter, BOLTE has had his Bar license interfered with and impaired; has been defamed; has suffered the loss of the contract rights, privileges, and benefits he was entitled to under the AGREEMENT, past and future; has had his assets wrongfully levied upon and appropriated; has been

required to expend money and incur obligations for legal fees and costs to rectify the results of the Defendants' improper and unlawful conduct; has had his personal and professional reputations irreparably defamed and damaged; and has suffered extreme emotional distress resulting in damages in amounts to be proven to the court estimated to be well in excess of one million dollars plus exemplary damages.

ALLEGATIONS FOR COMMON LAW CLAIMS AGAINST KOSCOVE

Interference with Contract Rights

30. Plaintiff BOLTE hereby realleges and incorporates by reference each and every allegation set forth hereinabove.

31. Defendant KOSCOVE tortiously interfered with BOLTE's contract rights, privileges, and benefits under the written AGREEMENT with KOSCOVE by obtaining a false finding of unauthorized practice of law in Colorado which resulted in the entry of an invalid and bogus judgment.

32. The rights, privileges and benefits lost are the sums KOSCOVE owes BOLTE in the amounts of ten and twenty per cent of the increased royalties paid by ARCO, and to be paid by ARCO, to KOSCOVE from and after November 22, 1994, said increased amounts to be determined by proof to the court and estimated to be in excess of $1,000,000.00.

33. The Defendant's actions were undertaken knowingly, intentionally, willfully, wantonly, falsely and maliciously and in reckless disregard for Plaintiff's rights, and as a direct and proximate result thereof Plaintiff BOLTE suffered economic

and emotional damages in a total amount to be proven at trial, together with exemplary and punitive damages in an amount sufficient to deter said Defendant and others from similar future wrongful conduct.

On contract

34. Plaintiff BOLTE hereby realleges and incorporates by reference each and every allegation set forth hereinabove.

35. Plaintiff BOLTE and Defendant KOSCOVE entered into a written AGREEMENT on November 22, 1994 employing BOLTE to investigate and verify the accuracy of royalty payments due KOSCOVE from the ARCO Oil Company arising out of her ownership of land in southern Colorado. (full text of contract in Attachment C)

36. BOLTE performed all work required of him under said contract and is due a percentage of increased sums paid by ARCO to KOSCOVE in the past, being paid monthly in the present, and to be paid in the future all as called for in said AGREEMENT, said percentage amounts to be determined by proof to the court and estimated to be well in excess of $1,000,000.00.

37. BOLTE seeks to have the CISNEROS DECISION declared void; and the AGREEMENT confirmed, enforced, and have any amounts due thereunder ordered to be paid.

Wrongful execution

38. Plaintiff BOLTE hereby realleges and incorporates by reference each and every allegation set forth hereinabove.

39. Using the invalid and bogus El Paso County Court DECISION and judgment against BOLTE (Attachment D) for the sum of $388,013.23 plus

interest and costs, KOSCOVE wrongfully, unlawfully, and tortiously levied execution against the property of BOLTE with Merrill Lynch ($2,700), including an exempt pension account (SEPP) ($24,700), and forced the distressed sale of his real estate ($237,000) well knowing that the judgment was obtained by fraud and was entered by a court without jurisdiction to do so.

40. As a direct and proximate result of the conduct alleged hereinabove, BOLTE has suffered contract and property losses, general and special pecuniary and non-pecuniary damages in amounts to be established at trial.

41. KOSCOVE'S actions were undertaken knowingly willfully, wantonly, falsely and maliciously and in reckless disregard of Plaintiff's rights, and as a direct and proximate result thereof Plaintiff BOLTE suffered economic and emotional damage in a total amount to be proven at trial, together with exemplary and punitive damages in an amount sufficient to deter said Defendant and others from similar future wrongful conduct.

AGAINST KOSCOVE and Judicial Defendants
Defamation and Libel per se

42. Plaintiff BOLTE hereby realleges and incorporates by reference each and every allegation set forth hereinabove.

43. On September 9, 1998, KOSVOVE, filed and published a libelous unethical conduct complaint against BOLTE with the Wisconsin Board of Attorney Professional Responsibility (BAPR), now Office of Lawyer Regulation (OLR), in Wisconsin, alleging that BOLTE had engaged in the unauthorized practice of law in Colorado citing,

using and relying upon the false and fraudulent CISNEROS DECISION.

44. The accusations entered of record and published to third parties by KOSCOVE and the JUSTICES of unlawful unauthorized conduct by Plaintiff were false, unprivileged, and defamatory, amounting to libel per se, as Plaintiff did not at any time engage in the unlawful and unauthorized practice of law conduct alleged by KOSCOVE and condemned by the JUSTICES. The submission and publication of said false and defamatory statements was intentionally and maliciously made and/or made with reckless disregard for its truth or falsity.

45. Because the false and defamatory published statements impute to the Plaintiff dishonest, unlawful, and illegal conduct and injure the Plaintiff in his personal and professional life and reputation, they constitute libel per se for which Plaintiff is presumptively entitled to recover damages without proof of same.

46. As a direct and proximate result of the Defendants' conduct as alleged hereinabove, Plaintiff has suffered general and special pecuniary and non-pecuniary damages in an amount to be established at trial.

47. The alleged actions were undertaken willfully, wantonly, maliciously and\or with intentional disregard for Plaintiff's rights and reputation. Plaintiff therefore seeks exemplary and punitive damages in an amount sufficient to deter said Defendants and others from similar future wrongful conduct.

Intentional Infliction of Emotional Distress

48. Plaintiff BOLTE hereby realleges and incorporates by reference each and every allegation

set forth hereinabove.

49. By KOSCOVE falsely attacking BOLTE before the Plaintiff's Wisconsin Bar Association in the manner alleged, and by the JUSTICES publicly castigating and wrongly disciplining BOLTE, the Defendants intentionally inflicted extreme emotional distress upon Plaintiff. Their tortious conduct was unreasonable and outrageous and exceeds the bounds usually tolerated by decent society, and was done willfully, maliciously and deliberately with the intent to cause Plaintiff severe mental and emotional pain, distress, and anguish and loss of enjoyment of life, or was done with intentional disregard and\or reckless indifference to the likelihood that such behavior would cause such severe emotional distress and with utter disregard for the consequences of such actions.

50. The behavior and conduct on the part of the Defendants as described hereinabove was so extreme and so outrageous as to be capable of causing Plaintiff severe emotional distress and has in fact caused Plaintiff severe mental anguish, distress, and humiliation.

51. As a direct and proximate result of the conduct of the Defendants as alleged hereinabove, Plaintiff has suffered non-pecuniary damages in an amount to be proven at trial. Their actions were undertaken knowingly, willfully, wantonly, maliciously with intentional disregard and\or in deliberate and reckless disregard for Plaintiff's rights, and as a direct and proximate result thereof Plaintiff suffered economic and emotional damage in a total amount to be proven at trial, therefore Plaintiff seeks punitive damages in an amount sufficient to deter said Defendants and others from

similar future wrongful conduct.

WHEREFORE, plaintiff requests that this Court:

1. Where available, issue declaratory judgments and permanent restraining orders

   a. preventing the Wisconsin Supreme Court and its JUSTICES, the El Paso District Court and Judge Cisneros, individually and/or collectively, directly or under color of law, from depriving citizens of those rights, privileges, and immunities secured to them by the Constitution of the United States, Amendments thereto, and other laws of the United States, under exceptions to the Anti-Injunction Act, 28 U.S.C. §2283;

b. declaring that the Supreme Court of Wisconsin and the District Court of El Paso County have enforced their state laws against BOLTE in a manner contrary to, repugnant to, and in violation of the Plaintiff's rights under the Constitution as Amended and laws of the United States, and violative of the Supremacy Clause, Article VI, cl. 2, of the Constitution and that said judgments are void;

c. prohibiting any and all of the Defendants from enforcing or collecting, through supplemental proceedings, execution, attachment, garnishment, or in any other way, the fraudulent and void judgment entered against the plaintiff in the Colorado District Court action or judgments for costs assessed against him in the state courts of Wisconsin or Colorado or any federal court;

d. directing the defendant KOSCOVE to return any monies, funds, or property, or the equivalent thereof, once belonging to the plaintiff and obtained from him during wrongful supplemental proceedings

directly or indirectly and award damages and costs and attorneys' fees for wrongful execution of and against his property.

2. Award money damages to redress injuries caused to the Plaintiff by the acts of the Defendants in violation of BOLTE's civil liberties, privileges, and property rights and in violation of BOLTE's due process rights; together with costs, including reasonable attorneys fees and expert fees under 42 U.S.C § 1988, Civil Rights Attorney's Fees Awards Act; and money damages for per se libel in amounts to be determined according to proof and\or by operation of law.

3. Award punitive damages against all Defendants except the Supreme Court of Wisconsin and El Paso County for knowingly and intentionally disregarding the civil rights of the plaintiff.

4. Award on the common law claims, against the specified defendant(s):

a. general, special, consequential and/or continuing damages for interference with contract rights; and all amounts due under contract from the Defendant KOSCOVE, plus prejudgment interest thereon, according to proof or by operation of law;

b. damages for per se libel in an amount to be determined according to proof and\or by operation of law;

c. damages for intentional infliction of emotional distress in an amount to be determined according to proof or by operation of law;

d. exemplary and punitive damages to the extent allowed by law and in an amount according to proof;

e. the amounts due to BOLTE from KOSCOVE under the Agreement of November 22, 1994 plus

interest, prejudgment interest, costs and attorney's fees.

f. for all attorney's fees, costs and debts incurred defending the Colorado lawsuits and Wisconsin ethics complaint, at any and all levels;

g. for attorneys' fees and costs of suit herein pursuant to statute or as otherwise may be allowed by law.

5. Award money damages to redress injuries caused to the plaintiff by the acts of the defendant KOSCOVE for wrongfully levying execution against BOLTE'S property and for the return of all funds and property thereby obtained, and for punitive damages against defendant KOSCOVE for the same; and

6. For such other relief deemed appropriate by the court.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury on all issues triable by right to a jury.

Date, May 27, 2008

_____/s/_____
Richard Bolte, pro se

Richard Bolte
3805 NE 115th St
Seattle, WA 98125
206-817-6398

ADDRESSES OF DEFENDANTS

Supreme Court and Justices
Clerk's Office
110 East Main Street, Suite 215
Madison, WI 53701-1688

Carol Koscove
54 Marland Rd
Colorado Springs, CO 80906

Judge Cisneros and El Paso County
County Courthouse
270 South Tejon
Colorado Springs, CO

285 Wis.2d 569
699 NW2d 914

2005 WI 132

NOTICE
This opinion is subject to further editing and modification. The final version will appear in the bound volume of the official reports.

No. 2003AP1184-D

STATE OF WISCONSIN IN SUPREME COURT

FILED
JUL 19, 2005
Cornelia G. Clark
Clerk of Supreme Court

In the Matter of Disciplinary Proceedings
Against Richard Bolte, Attorney at Law:
Office of Lawyer Regulation,
Complainant-Respondent,
v.
Richard Bolte,
Respondent-Appellant

ATTORNEY disciplinary proceeding. *Attorney publicly reprimanded.*

¶1 PER CURIAM. Attorney Richard Bolte appeals from a referee's report and recommendation issued May 26, 2004, concluding that Attorney Bolte engaged in the unauthorized practice of law in violation of SCR 20:5.5(a)[1] and transferred real

estate with the intent to hinder, delay or defraud the rights of a judgment creditor in violation of SCR 20:8.4(c).[2] The referee recommended the court suspend Attorney Bolte's license to practice law for a period of three months. We adopt the referee's findings of fact and conclusions of law, but conclude that a public reprimand is sufficient discipline for Attorney Bolte's misconduct in this matter.

¶2 Bolte was admitted to practice law in Wisconsin in 1961. His license to practice law in Wisconsin has remained in good standing and he has not been the subject of any prior discipline. Since 1989, he has elected to be on "inactive" status in Wisconsin, which means that he is not engaged in the active practice of law in Wisconsin. See SCR 10.03(3) (Membership).

¶3 The events giving rise to this proceeding occurred in Colorado, where Bolte was then residing. Bolte was not licensed to practice law in Colorado.

¶4 In 1994, a Colorado resident named Carol Koscove (Koscove) learned that Bolte was a lawyer and asked him for professional assistance with a potential dispute involving royalty payments due pursuant to the terms of an existing mineral lease on her property. Simply put, the lease gave Atlantic Richfield Company (ARCO) rights to extract, inter alia, carbon dioxide from her property. Koscove suspected she was not receiving proper compensation under the terms of the lease. She had approached several other individuals seeking help with this matter.

¶5 Bolte advised Koscove that while he was a lawyer, he was not licensed to practice in Colorado. He explained that he could not appear in court and that she would have to hire a lawyer to pursue any legal redress. The referee stated: "[i]t is clear from

the evidence that it was Koscove who pursued Bolte's services and that Bolte was initially reluctant to become involved."

¶6 However, Bolte eventually agreed to look into the matter and the parties negotiated an agreement, executed on November 22, 1994, that provided Bolte would "investigate, examine, copy, analyze and interpret" documents pertaining to the ARCO lease and the royalty payments to which Koscove claimed she was entitled. The parties agreed that Bolte would be paid $5000 per month and he was provided with a computer and a car. Under the terms of the agreement Bolte was also to receive a percentage of monies recovered by Koscove from ARCO if Koscove's suspicions proved correct and she prevailed on any ensuing claim.

¶7 Bolte investigated the lease dispute. Upon completion of his investigation, he advised Koscove that he believed ARCO had indeed underpaid her and that she should hire a lawyer to pursue her claims. Koscove and Bolte met with Attorney George Mueller, an attorney experienced in oil and gas leases, on January 30, 1995. After negotiating the terms of a retainer agreement, Koscove formally retained Attorney Mueller on or about April 7, 1995. Throughout this time, Bolte continued to perform work under the agreement and collaborated with Mueller preparing the case for litigation.

¶8 In July 1995, ARCO filed a declaratory judgment action against Koscove and others regarding various oil and mineral leases in federal district court in Colorado. Attorney Mueller filed a counterclaim on Koscove's behalf, identifying Bolte on the pleading as "of counsel."

¶9 On November 7, 1995, Bolte executed an affidavit

in support of a motion for pro hac vice status in the Koscove/ARCO matter.[3] On January 5, 1996, the court entered an order permitting Bolte to appear pro hac vice in the Koscove/ARCO matter.

¶10 In March 1996, ARCO sent Koscove a check for $1,883,816.13 in partial settlement of Koscove's claims. On April 17, 1996, Koscove paid Bolte $388,013.23 in accordance with the terms of the agreement.

¶11 Koscove then retained another attorney through whom she advised Bolte that, unless he accepted the $388,013.23 as full and final payment under the agreement, she would file a lawsuit alleging he had engaged in the unauthorized practice of law. Bolte refused, maintaining that the terms of the agreement entitled him to a percentage of any additional recovery from ARCO.

¶12 On September 18, 1996, Koscove filed a civil lawsuit against Bolte in El Paso County District Court, Koscove v. Bolte, No. 96 CV 2233, alleging that the agreement between the parties was unenforceable because Bolte's services to her constituted the unauthorized practice of law under a relevant state statute. Specifically, she sought a judgment pursuant to Colorado statute § 12-5-115, which provided that "[i]f any unlicensed person receives any money . . . as a fee or compensation for services rendered . . . by him as an attorney or counselor-at-law within this state, all money so received by him shall be considered as money received to the use of the person paying the same and may be recovered with costs of suit by an action for money had and received." The matter proceeded to trial.

¶13 On April 6, 1998, the El Paso County District

Court concluded that Bolte had indeed violated the state statute, and entered judgment against Bolte in the amount of $388,013.23, plus interest and costs. On April 13, 1998, after these findings were entered but prior to the issuance of a writ of execution, Bolte transferred the title to certain real property he owned in Divide, Colorado, by recording a quit claim deed to Bredescel Financial, Inc., a Nevada corporation (Bredescel), as the grantee. The deed was transferred without consideration, and without advance notice to Bredescel, which was owned by an acquaintance of Bolte.

¶14 Meanwhile, Bolte appealed the civil judgment and the Colorado Court of Appeals affirmed. Koscove v. Bolte, 30 P.3d 784 (Colo. Ct. App. 2001). Bolte sought further review, but both the Colorado Supreme Court and the United States Supreme Court declined to review the matter. Bolte also unsuccessfully sought relief from the judgment in federal district court.

¶15 Meanwhile, Koscove proceeded to file a grievance against Bolte in Wisconsin.

¶16 On May 1, 2003, the Office of Lawyer Regulation (OLR) filed a complaint against Bolte, alleging he (1) performed legal services for Koscove in the State of Colorado, which constituted the unauthorized practice of law in violation of SCR 20:5.5(a) (Count I); (2) transferred real estate with the intent to hinder, delay or defraud Koscove's rights as a judgment creditor in violation of SCR 20:8.4(c) (Count II); and (3) made misrepresentations to a federal district court in Colorado in relation to his application for admission pro hac vice in violation of SCR 20:8.4(c) (Count III). The OLR sought a nine-month suspension of Attorney Bolte's

license to practice law.

¶17 The parties stipulated to certain facts and a hearing was conducted on November 12, 2003. Post-hearing briefing was ordered, and the referee issued his report and recommendation on or about May 26, 2004.

¶18 The referee concluded that many, if not most, of the activities Bolte performed on Koscove's behalf were permissible investigative services, or were protected by virtue of his legitimate pro hac vice admission.[4] However, the referee concluded that some of the activities Bolte performed did constitute the unauthorized practice of law. He concluded further that Bolte's conveyance of real property in the wake of the civil judgment was for the purpose of minimizing the judgment obtained by Koscove and in violation of SCR 20:8.4(c). However, he noted that Koscove was not damaged by the transfer because the property in question was fully mortgaged at the time. The referee recommended a three-month suspension of Bolte's license to practice law in Wisconsin. This appeal followed.

¶19 Bolte contends that the referee erred in concluding that he engaged in the unauthorized practice of law, and also erred in concluding that he violated SCR 20:8.4(c) by transferring the real estate to Bredescel. He states his issues for review as follows:

I. When a Wisconsin attorney provides investigative services in another state pursuant to a written agreement, is that attorney engaged in the unauthorized practice of law if the attorney is subsequently admitted to practice pro hac vice by the federal court of that state?

II. May a Wisconsin attorney be disciplined for

transferring property with intent to defraud a judgment creditor when the property at issue was fully mortgaged and had no equity value?

¶20 It is well settled that we will affirm the referee's findings of fact unless they are clearly erroneous. We review conclusions of law de novo. In re Disciplinary Proceedings Against Eisenberg, 2004 WI 14, ¶5, 269 Wis. 2d 43, 675 N.W.2d 747.

¶21 The first issue we consider is whether certain activities Bolte engaged in prior to the time Koscove retained Attorney Mueller constituted the unauthorized practice of law.[5] In Wisconsin, SCR 20:5.5(a) provides that "[a] lawyer shall not practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction." Therefore, the question whether Bolte engaged in the unauthorized practice of law must be analyzed under Colorado law.

¶22 Colorado's disciplinary rule 5.5(a) provides that "a lawyer shall not practice law in a jurisdiction where doing so violates the regulations of the legal profession in that jurisdiction." The Colorado rule is thus virtually identical to Wisconsin's rule. In addition, the Colorado Supreme Court has promulgated rules of practice governing the unauthorized practice of law, which are investigated and prosecuted by a court appointed committee. See C.R.C.P. 228 to 240.1.

¶23 A Colorado court ruled that Bolte violated a Colorado civil statute prohibiting the unlicensed practice of law. However, Bolte argued and the referee agreed that the resulting judgment is of limited usefulness in this disciplinary proceeding because the burden of proof used in the Colorado civil case was lower than the "clear and convincing"

evidence standard applicable to disciplinary matters in Wisconsin. Therefore, the OLR was required to independently prove that Bolte engaged in the unauthorized practice of law, by clear and convincing evidence.

¶24 A leading case in Colorado on the unauthorized practice of law is Denver Bar Association v. Public Utilities Commission, 391 P.2d 467 (Colo. 1964). There, the Colorado Supreme Court recognized that:

> There is no wholly satisfactory definition as to what constitutes the practice of law; it is not easy to give an all-inclusive definition. We believe that generally one who acts in a representative capacity in protecting, enforcing, or defending the legal rights and duties of another and in counselling, advising and assisting him in connection with these rights and duties is engaged in the practice of law. Difficulty arises too in the application of the definition.

Id. at 471 (emphasis added); see also C.R.C.P. 201.3.[6]

¶25 The referee opined that: "many of the instances of the alleged unauthorized practice of law cited by OLR are actually a combination of permissible investigative activities by Bolte and the impermissible practice of law by Bolte." The referee specifically identified the following as examples of activities that he deemed to constitute the unauthorized practice of law:

On March 30, 1995, Bolte prepared what he called a "Brief," a document that appears to be a combination of permissible document review and impermissible legal analysis and advice.

On November 30, 1994, Bolte prepared a memorandum. Again, most of the memorandum

records the results of Bolte's investigation. However, Bolte then documents his legal analysis by applying the facts he learned to the law.
Sometime late in March 1995, Bolte and Koscove met with several witnesses. Bolte prepared a summary and notes of their meeting. The majority of the memorandum and notes simply record permissible investigative services rendered by Bolte. However, Bolte then indicates statutes of limitation issues were discussed. Laws passed by Congress were also discussed.
Bolte assisted Koscove in negotiating the terms and conditions of the retainer agreement with Mueller. Bolte expressed his opinion to Koscove that she could pursue penalty interest or treble damages under Federal antitrust laws.
Bolte sent a letter to ARCO containing a list of questions, along with a copy of a power of attorney that Bolte prepared for Koscove.
¶26 A related question is whether Bolte's actions are nonetheless protected by the pro hac vicerule articulated in Spanos v. Skouras Theatres Corp., 364 F.2d 161, 169 (2d Cir. 1965) affg 235 F. Supp 1 (S.D.N.Y. 1964), cert. denied, 385 U.S. 987 (1966). Bolte contends that the holding in Spanos provides that his pro hac vice admission to the federal court encompasses any legal services "reasonably incident" to his activities before the federal court in this matter. In other words, he contends that it insulates an attorney from claims of unauthorized practice of law within the state in which the district court is located. Spanos v. Skouras Theatres Corp., 235 F. Supp 1, 13 (S.D.N.Y. 1964).
¶27 At the oral argument before this court there was discussion about the precise period of time the court

should scrutinize in considering whether Bolte engaged in the unauthorized practice of law, and the extent to which Bolte's pro hac vice admission to the federal court immunized his earlier activities related to the Koscove/ARCO matter.

¶28 Bolte executed the agreement with Koscove on or about November 22, 1994. Attorney Mueller was interviewed on or about January 30, 1995. He was not formally retained until on or about April 7, 1995, although it is undisputed that he performed legal services for Koscove while the retainer was being negotiated. ARCO filed suit against Koscove in July 1996. Bolte's application for pro hac vice admission was filed in November 1995 and Bolte was granted pro hac vice status by order dated January 5, 1996.

¶29 We have carefully considered Bolte's arguments, and the circumstances in which Bolte acted, and we must conclude that the record does contain clear and convincing evidence that Bolte engaged in the unauthorized practice of law with respect to certain of his activities.

¶30 For example, Bolte analyzed Koscove's lease with ARCO and expressed his opinion as to how it should be interpreted. Perhaps if Bolte were a geologist or mining engineer with relevant technical expertise, this action would not constitute the unauthorized practice of law. However, the record does not indicate that Bolte had such technical expertise. The value of his review lay in his legal analysis of the document. Similarly, Bolte expressed opinions about various legal theories for recovery of damages and discouraged Koscove from pursuing at least one theory. We conclude that these were direct legal services that constituted the unlicensed practice of law.

¶31 Similarly, in January 1995, Bolte sent a letter to ARCO containing a series of questions about the lease payments, together with a power of attorney authorizing him to communicate with ARCO on Koscove's behalf.

¶32 In the course of his investigation into the royalty payments due under the mineral leases in question Attorney Bolte evidently discovered and documented significant anomalies that were adverse to his client's financial interests. In addition to merely recounting facts he learned, he began to consider possible legal remedies that might be available to the client, and made recommendations concerning these legal theories and remedies.

¶33 We are not persuaded that Spanos immunizes all of Bolte's activities related to the ARCO/Koscove matter. As the referee observed:

The State of Colorado obviously has an interest in protecting its citizens from the unauthorized practice of law. That interest cannot be defeated by a claim that a case "might" ultimately be filed in Federal Court or that local counsel "might" ultimately be retained.

We conclude, under the facts of this case, that Bolte's initial activities conducted on Koscove's behalf, investigating and evaluating the ARCO lease were not, as a matter of law, sufficiently linked to the federal court proceedings to be deemed "reasonably incident" to his subsequent activities before the federal court for purposes of Spanos.

¶34 The second issue on appeal involves whether the OLR demonstrated with clear and convincing evidence that Bolte's quit claim deed transfer of his Colorado real property violated SCR 20:8.4(c).

¶35 SCR 20:8.4(c) provides that it is "professional

misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation." Bolte contends that he did not violate this rule because the property in question had no equity at the time of the conveyance. He asserts that under Colorado law, "[t]he fundamental element of a fraudulent conveyance is whether the debtor's estate is unjustly diminished and he cites Megabank Financial Corp. v. Alpha Gamma Rho Fraternity, 841 P.2d 318, 320 (Colo. Ct. App. 1992) in support of his argument. He maintains that the transfer was "the knee jerk reaction of a man who believed that the State of Colorado had wronged him, who wanted to leave the state and everything associated with it."

¶36 However, the OLR notes that under SCR 20:8.4 it "is unnecessary to either plead or prove the tort of misrepresentation in order to establish by clear and convincing evidence that an attorney has violated a rule of professional conduct, proscribing attorney conduct involving dishonesty fraud, deceit or misrepresentation." See In re Disciplinary Proceedings Against Marks, 2003 WI 114, ¶50, 265 Wis. 2d 1, 665 N.W.2d 836 (citation omitted). The OLR points to (1) the timing of the transfer, a mere one week after judgment was entered against Bolte; (2) contemporaneous efforts to shield himself from the judgment including an effort to enjoin the court from entering final judgment; (3) the unilateral nature of the transfer, without the grantee's knowledge or consent; and (4) what the OLR deemed the "unlikely explanation" provided by Bolte.

¶37 While this evidence is largely circumstantial it is not insufficient. See, e.g.,Peters v. State, 70 Wis. 2d 22, 33-34, 233 N.W.2d 420 (1975). We deem the

referee's credibility determinations highly relevant here. The referee stated: "[w]hile Bolte may have had little or no equity in the property, that fact does not justify the fraudulent nature of the conveyance by Bolte, which was to defeat and minimize the judgment taken by Koscove." We agree that the OLR has demonstrated that Bolte's decision to transfer the Colorado property was made with intent to interfere with Koscove's ability to levy on the property in violation of SCR 20:8.4(c).

¶38 We turn to the question of the appropriate discipline for Attorney Bolte's violations of SCR 20:5.5(a) and SCR 20:8.4(c). The OLR maintained that a nine-month suspension of Bolte's license to practice law was appropriate. The referee recommended a suspension of three months.

¶39 While this is a case implicating the parameters of the unauthorized practice of law, it is an unusual one. We have no doubt that there are peculiar circumstances giving rise to this proceeding, which are not reflected in the record before us. What we have here is an undoubtedly skilled lawyer who was not lawfully entitled to render legal advice in Colorado because he was not licensed to practice law there. At no time did he misrepresent this status to his client. Indeed, he apparently took pains to try to define a permissible scope of activities and, when it became apparent that litigation was likely, promptly advised the client to retain a licensed attorney and assisted the client in finding appropriate counsel. He then collaborated with the licensed attorney to obtain pro hac vice admission to federal court in Colorado so he could lawfully assist with the litigation, which clearly inured to Koscove's financial benefit.

¶40 Ultimately, the assessment of Bolte's motives required a credibility determination, which is vested in the referee. Here, the referee observed: "Bolte was honest, sincere and hard working in all the services he rendered to Koscove under the Agreement. It was his efforts that played a major role in Koscove's successful result." He adds: "I find it difficult to believe that this conduct by Bolte would be repeated or that he poses a threat to the public. His conduct was isolated to this unique case. Appropriate discipline in this case should take these factors into account."

¶41 Mindful that protection of the public is the overriding concern in these matters, in this case, Koscove was never under any misunderstanding about Attorney Bolte's status as an unlicensed lawyer. Indeed, she was sufficiently aware of this fact that she used the threat--successfully--to divest him of earnings she had contractually agreed to pay for his services, after he assisted her in obtaining a multi-million dollar recovery.

¶42 Attorney Bolte does not reside in Wisconsin, has no prior disciplinary history, and has been on inactive status since 1989. He has been in good standing for some 44 years. There is no evidence the client suffered any harm as a result of Attorney Bolte's actions. Therefore, we conclude that a public reprimand is sufficient discipline for Bolte's misconduct in this matter. We accept the referee's recommendation that Bolte be directed to pay the costs of this disciplinary proceeding which presently total $23,345.64.

¶43 IT IS ORDERED that Richard Bolte is publicly reprimanded for professional misconduct.

¶44 IT IS FURTHER ORDERED that within 60

days of the date of this order Richard Bolte pay to the Office of Lawyer Regulation all the costs of this proceeding provided that if such costs are not paid within the time specified and absent a showing to this court of his inability to pay the costs within that time, the license of Richard Bolte to practice law in Wisconsin shall be suspended until further order of this court.

[1] SCR 20:5.5(a) provides: Unauthorized practice of law. "A lawyer shall not: (a) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction."
[2] SCR 20:8.4(c) provides: Misconduct. "It is professional misconduct for a lawyer to: (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation."
[3] This affidavit and Bolte's application for pro hac vice admission was the subject of one of the three disciplinary counts filed against Bolte. The Office of Lawyer Regulation (OLR) maintained that Bolte was less than forthright about his inactive status in Wisconsin when seeking pro hac vice admission. The referee disagreed and recommended the court dismiss this charge. The OLR did not appeal that recommendation so the issue of Bolte's pro hac vice admission is not before the court.
[4] As noted, the referee concluded that the OLR had failed to prove that Bolte engaged in conduct involving fraud, deceit or misrepresentation in relation to his pro hac vice application.
[5] The referee concluded that Bolte's activities following the retention of Attorney Mueller were protected bySpanos v. Skouras Theatres Corp., 364

F.2d 161, 169 (2d Cir. 1965), aff'g 235 F. Supp. 1 (S.D.N.Y. 1964), cert. denied, 385 U.S. 985 (1966). OLR does not challenge this conclusion.

[6] Rule 201.3 pertains to bar admission and classification of applicants and its definitions are limited to the rule. Still we deem it instructive that this rule defines the "practice of law" as follows:

(2) For purposes of this rule, "practice of law" means:

(a) The private practice of law as a sole practitioner or as a lawyer employee of or partner or shareholder in a law firm, professional corporation, legal clinic, legal services office, or similar entity; or

(b) Employment as a lawyer for a corporation, partnership, trust, individual, or other entity with the primary duties of:

(i) Furnishing legal counsel, drafting documents and pleadings, and interpreting and giving advice with respect to the law, and/or

(ii) Preparing, trying or presenting cases before courts, executive departments, administrative bureaus or agencies; or

(c) Employment as a lawyer in the law offices of the executive, legislative, or judicial departments of the United States, including the independent agencies thereof, or of any state, political subdivision of a state, territory, special district, or municipality of the United States, with the primary duties of

(i) Furnishing legal counsel, drafting documents and pleadings, and interpreting and giving advice with respect to the law, and/or

(ii) Preparing, trying or presenting cases before courts, executive departments, administrative bureaus or agencies; or

(d) Employment as a judge, magistrate, hearing examiner, administrative law judge, law clerk, or

similar official of the United States, including the independent agencies thereof, or of any state, territory or municipality of the United States with the duties of hearing and deciding cases and controversies in judicial or administrative proceedings, provided such employment is available only to a lawyer; or
(e) Employment as a teacher of law at a law school approved by the American Bar Association throughout the applicant's employment; or
(f) Any combination of subparagraphs (a)-(e) above.

© 2010, State Bar of Wisconsin
P.O. Box 7158, Madison WI 53707-7158.

DISTRICT COURT, EL PASO COUNTY, COLORADO
Case No. 96CV2233, Division 8

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

CAROL KOSCOVE, Plaintiff,

v.

RICHARD BOLTE Defendant.

This matter came before the Court for trial on November 19, 1997 and November 20, 1997. At that time the Court heard the testimony of various witnesses. Based upon that testimony, the Court finds the following:

Plaintiff is the owner certain real estate in Huerfano County, Colorado. The real estate has been leased to ARCO Oil Company for the purpose of extracting CO2 and other minerals from the property and Plaintiff is entitled, by virtue of the lease, to receive royalties. Sometime in 1990, Plaintiff began to suspect that ARCO was not paying the correct amount of monies due Plaintiff pursuant to the lease. In the fall of 1994, after talking with several other individuals about the matter, Plaintiff sought the assistance of Defendant

in pursuing the issue of whether ARCO was paying the proper amount to Plaintiff. Plaintiff knew at the time she talked with Defendant that Defendant was a lawyer. Plaintiff also knew that Defendant was not licensed to practice law in Colorado.

Defendant agreed to assist Plaintiff in the matter with ARCO and the parties signed a contract on November 22, 1994. At the time Plaintiff and Defendant entered into the contract, Defendant was not licensed nor otherwise authorized to practice law in Colorado. Defendant was a lawyer licensed in Wisconsin and in fact, had received his Wisconsin license in 1961. He had no special expertise in the area of oil and gas litigation. Additionally, there was no litigation actually pending, and no Colorado attorney had been hired by Plaintiff to represent her in her complaints against ARCO.

The contract signed by the parties required the Defendant to investigate, examine, copy, analyze and interpret documents pertaining to the mineral extraction and royalty payments. The terms of payment between Plaintiff and Defendant are set forth on Page 3 in Volume 1 of the trial exhibits. In addition to a set amount agreed to between Plaintiff and Defendant for Defendant's time, computer items and a vehicle for Defendant to use in pursuing Plaintiff's claims against ARCO, the contract also required Plaintiff to pay to Defendant certain additional amounts of money contingent upon Plaintiff and ARCO reaching a settlement or in the event of a judgment after litigation.

Upon the signing of the contract, Defendant

began to investigate the leases. He also performed legal research, crated legal memoranda which he provided to Plaintiff, advised Plaintiff as to her potential claims for relief and potential damages, and generally advised her of the course of action to take regarding her complaint with ARCO. During the period from November 22, 1994 through April 6, 1995, Defendant performed these services without the benefit of having been admitted *pro hac vice* in Colorado and without associating with duly-licensed Colorado counsel.

On April 7, 1995, the Plaintiff and George Mueller, an attorney with a sub-specialty in oil and gas litigation entered into an attorney-client relationship in which Mr. Mueller agreed to represent Plaintiff in United States District Court litigation with ARCO.

After Plaintiff formally engaged Mr. Mueller, Defendant continued to investigate Plaintiff's potential claims against ARCO. He also continued to perform legal research, draft pleadings and advise Plaintiff in legal matters involving ARCO. Plaintiff and Defendant did not enter into a separate contract to compensate Defendant for the work he performed after Plaintiff hired George Mueller. Additionally, he engaged in settlement negotiations with ARCO. Defendant was not supervised by Mr. Mueller and Mr. Mueller believed Defendant to be lead counsel in the litigation.

Before Plaintiff hired George Mueller, she paid Defendant in accordance with the contract. After Plaintiff hired George Mueller and up to the time the dispute arose about the contingency

regarding future royalties, Plaintiff paid Defendant in accordance with the terms of the November 22, 1994 contract. At no time relevant to this lawsuit has George Mueller or his law firm paid Defendant, nor did Mr. Mueller or his law firm hire Defendant to act as a consultant to them. At all times relevant to this Complaint, Defendant acted pursuant to the November 22, 1994 contract between Plaintiff and Defendant.

On January 1, 1996, Defendant was admitted *pro hac vice* by the United States District Court for the District of Colorado.

On March 28, 1996, ARCO paid Plaintiff $1,883,816.13 as a result of one of Plaintiff's claims in the United States District Court and Plaintiff paid Defendant his percentage in accordance with the November 22, 1994 contract. Defendant received over $300,000 from Plaintiff as a result of the March 28, 1996 payment by ARCO to Plaintiff. Plaintiff has at no time been dissatisfied with the work Defendant performed for Plaintiff. Defendant withdrew from further representation of Plaintiff in the AR litigation
because of a dispute between Plaintiff and Defendant over the contingency in the November 22, 1994 contract requiring Plaintiff to pay a percentage of future royalties. This lawsuit followed.

On September 18, 1996, Plaintiff filed an Amended Complaint alleging that the November 22, 1994 contract between Plaintiff and Defendant was a contract for legal services, and that in fact Defendant performed legal services under the

contract when he was not licensed or otherwise authorized to do so. Further, Plaintiff claims that because this is an agreement for legal services and the contract does not substantially comply with Rule 4 of Chapter 23.3, C.R.C.P., the Plaintiff is not bound by the contract. Plaintiff requests that the compensation she has paid Defendant be returned under C.R.S. Section 12-5-115 and has agreed to waive the statutory penalty of treble damages.

Defendant denies that the services performed by him pursuant to the contract constitute the unauthorized practice of law. Defendant further counterclaimed for breach of contract and defamation.

The Court dismissed the defamation claim at the close of the Defendant's evidence for failure of Defendant to present a *prima facie* case of defamation.

For reasons stated hereafter, the Court finds for the Plaintiff and against the Defendant on all remaining issues in the case.

Defendant claims in the first instance that he was not practicing law. The Court disagrees with Defendant.

Generally, one who acts in a representative capacity in protecting, enforcing or defending the legal rights and duties of another and in counseling, advising and assisting him in connection with these rights and duties is engaged in the practice of law. *Denver Bar Association v. Public Utilities*

Commission, 154 Colo. 273, 391 P.2d 467 (1964). Preparing legal motions, notices and other memoranda for individuals and advising persons as to what their rights and obligations are is practicing law. *See, Unauthorized Practice of Law Committee v. Richard O. Grimes*, 654 P.2d 822 (Colo. 1982). That is precisely what Defendant did here: counsel, advise and assist Plaintiff with her legal rights against ARCO.

Defendant then claims that to the extent he was practicing law, it was not the unauthorized practice of law because under *Spanos v. Skouras Theatres Corporation,* 364 F.2d 161, on reconsideration *en banc* (4th Cir. 1966), he was authorized to do so even though he did not have a license to practice law in Colorado. The Court finds that *Spanos v. Skouras*, *supra*, is inapplicable to this lawsuit because in *Spanos* the out-of-state lawyer had been invited by the Plaintiff to work in association with a local attorney to work on a federal claim. Such is not the case here. At the time of the signing of the contract, there was no federal claim filed or necessarily anticipated. In fact, part of what Defendant did is advice Plaintiff on whether to file a lawsuit, and whether to file in state court or in federal court. Further, Plaintiff did not invite Defendant to work on her claims involving ARCO in conjunction with a licensed Colorado lawyer and in fact at the time of the signing of the contract between Plaintiff and Defendant, there was no Colorado counsel involved. For almost five months (November 22, 1994 through April 6, 1995), Defendant practiced law in Colorado without the benefit of either a license to do so or the association

with local counsel. Additionally, the holding in *Spanos* was specifically limited to cases involving federal claims or defenses as opposed to cases such as this involving jurisdiction based upon diversity of citizenship.

Having concluded that Defendant was committing the unauthorized practice of law, the Court moves on to the issue of whether he is precluded from recovering under the terms of the contract.

The contract required the Defendant to *analyze, interpret and pursue* Plaintiff's claims against ARCO. The Court has found that what Defendant did in part under the contract and what the contract required is legal services that Defendant was not authorized to perform. A contract, entered into by a person in the course of an occupation or business in which he is engaged without taking out a license as required by law, is void and unenforceable where the statute or ordinance expressly vitiates such contracts, or where it expressly prohibits the carrying on of such occupation or business without a license even though it does not expressly declare such contracts to be void. *Benham v. Hyde*, 122 Colo. 233, 221 P.2d 1078 (1950).

C.R.S. Section 12-5-101 states:

> No person shall be permitted to practice as an attorney or counselor-at-law or to commence, conduct, or defend any action, suit, or plaint in which is not a party concerned in any court of record

> within this state, either by using or subscribing his own name or the name of any other person, without having previously obtained a license for that purpose from the supreme court.
> C.R.S. Section 12-5-115 states:
>
> If any unlicensed person receives any money or any species of property as a fee or compensation for services rendered or to be rendered by him as an attorney or counselor-at-law within this state, all money so received by him shall be considered as money received to the use of the person paying the same and may be recovered with costs of suit by an action for money had and received.

Therefore, under C.R.S. Sections 12-5-101 and 12-5-115, Defendant is not allowed to keep the money paid to him by Plaintiff pursuant to the contract.

Additionally, pursuant to Rule 6 of Chapter 23.3, C.R.C.P., Defendant is not entitled to keep the money Plaintiff has paid him. The contract by which Defendant was paid for these legal services was in part a contingency fee contract for legal services. The contract was in part a contingency fee contract because the contract required Plaintiff to pay Defendant a certain amount of money contingent upon any settlement with ARCO and any increase in royalties received by Plaintiff as a result of Defendant's work. In fact, that clause in the contract is what gave rise to the dispute between Plaintiff and Defendant. Rule 6 of Chapter 23.3,

C.R.C.P. requires that certain enumerated items be placed in a contingency fee agreement. As a result of the legal and non-legal work the Defendant did in connection with the contract entered into between him and Plaintiff requiring him to interpret, analyze and pursue Plaintiff's claim against ARCO, Plaintiff paid Defendant a substantial sum of money. This money, however, was paid pursuant to a contingency fee contract which is not in substantial compliance with all of the provisions of the rule. Specifically, the contract is not in substantial compliance with Rule 6 of Chapter 23.3, C.R.C.P. because Defendant did not disclose the return of other types of the arrangements, Defendant did not disclose the nature of specially awarded attorney fees, Defendant only partially disclosed the nature and estimated amount of expenses, Defendant did not disclose the potential for an award of costs and attorney fees to the opposing party, Defendant did not disclose what is meant by associated counsel, Defendant did not disclose what is meant by subrogation. Therefore, Defendant is not allowed to recover. *Elliott v. Joyce*, 889 P.2d 43 (Colo. 1994). Further, the contract is silent with respect to the parties' obligations should they mutually decide to terminate the Agreement, or should Defendant end the contract. Therefore, Defendant is not entitled to recover under the theory of *quantum meruit*. *Elliott v. Joyce, supra.*

Accordingly, judgment is hereby entered in favor of Plaintiff and against Defendant in the amount of $388,013.23 (the amount admitted in the Defendant's Answer as having been paid by Plaintiff to Defendant under the terms of the contract), plus interest and costs.

DATED this 6th day of April, 1998.

BY THE COURT:

s/_____

Theresa M. Cisneros

District Court Judge